

# EXHIBIT

## 28

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4       - - - - - x

5   In Re: NATIONAL PRESCRIPTION       :  
6   OPIATE LITIGATION                   :MDL NO. 2804  
7                                        :CASE NO. 1:17-MD-2804  
8   THIS DOCUMENT RELATES TO:       :  
9   "Case Track Nine"                   :

10   - - - - - x

11                   HIGHLY CONFIDENTIAL - SUBJECT TO  
12                   FURTHER CONFIDENTIALITY REVIEW  
13                   TUESDAY, JULY 25, 2023

14

15   Remote Oral and Videotaped deposition of TIM MILLS  
16   conducted at the location of the witness in Ponca  
17   City, Arkansas, commencing at 10:03 a.m. CST, on  
18   the above date, before Karisa J. Ekenseair,  
19   Certified Court Reporter, Registered Merit  
20   Reporter, and Notary Public.

21

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ZACH HONE, VIDEOGRAPHER



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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the  
3 record. My name is Zach Hone. I'm a videographer  
4 for Golkow Litigation Services.

5 Today's date is July 25, 2023. The time  
6 is 10:03 a.m.

7 This remote video deposition is being held  
8 in the matter of In Re: National Prescription  
9 Opiate Litigation. The deponent is Tim Mills.  
10 All parties of this deposition are appearing  
11 remotely and have agreed to the witness being  
12 sworn in remotely.

13 Due to the nature of remote reporting,  
14 please pause briefly before speaking to ensure all  
15 parties are heard completely. Counsels'  
16 appearances will be noted on the stenographic  
17 record.

18 The court reporter will now swear in the  
19 witness.

20 TIM MILLS  
21 of lawful age, being first duly sworn, deposes and  
22 says in reply to the questions propounded as  
23 follows:

24 EXAMINATION

25 BY MR. LICHTER:

1 Q Good morning, Mr. Mills.

2 A Good morning.

3 Q Would you please state and spell your name  
4 for the record?

5 A Timothy Ross Mills, T-I-M-O-T-H-Y,  
6 R-O-S-S, M-I-L-L-S.

7 Q Okay. And have you ever had your  
8 deposition taken before?

9 A I'm not positive. I did have 20-plus  
10 years ago a few personal matters, minor personal  
11 matters, but I'm not for certain if I was actually  
12 deposed. I did offer some testimony in both cases  
13 though.

14 Q Okay. Were you a party to either of those  
15 cases, or were you giving testimony as a witness?

16 A I was a witness in one and a party in  
17 another.

18 Q Did either of those cases involve  
19 Albertsons?

20 A No.

21 Q Did either of those cases involve Safeway?

22 A No.

23 Q Okay. Did either of those cases involve  
24 any pharmacies?

25 A No.

1           Q   Okay.   Okay.   So you may have some  
2   experience with this before, but just to give you  
3   some basic admonitions for the ground rules for  
4   depositions, during the deposition, I'm going to  
5   be asking you a series of questions. From time to  
6   time, your counsel Mr. Doran, who I believe is  
7   sitting next to you, may object to some of my  
8   questions.

9           Just so you know, you are obligated to  
10   answer the responses even though Mr. Doran objects  
11   unless Mr. Doran specifically instructs you not to  
12   answer.

13           Do you understand that?

14           A   Yes.

15           Q   Okay. And we have a court reporter that's  
16   on the Zoom call taking down everything that we  
17   are saying. So it's important to the extent that  
18   we can, if we can speak slowly and to the best of  
19   our ability not to talk over one another.

20           Does that make sense?

21           A   Yes.

22           Q   Okay. And also, responses like uh-huh and  
23   huh-uh are usually sort of difficult for the court  
24   reporter to take down. So if a question calls for  
25   a yes-or-no answer, I would ask that you give a

1       yes-or-no response and avoid the uh-huhs and  
2       huh-uhs to the extent you can.

3               Is that okay?

4           A   Yes.

5           Q   Okay.  And have you taken any medications  
6       that may impair your ability to give truthful  
7       testimony today?

8           A   No.

9           Q   Okay.  Any reason at all why you might not  
10      be able to give truthful testimony here today?

11          A   No.

12          Q   Okay.  Okay.  I don't anticipate this  
13      deposition will last the entire day, but I do plan  
14      to take breaks throughout the deposition.  I  
15      usually aim to take a break every hour or so that  
16      we've been going.  But if at any time you'd like  
17      to take a break for any reason, if you need to get  
18      a drink of water, use the restroom, you can go  
19      ahead and let me know.

20               I would just ask that we -- we not take a  
21      break while a question is pending.  So if I've  
22      asked a question, I would ask that we complete the  
23      response, and then we can go ahead and break for  
24      however long we need.

25               Is that all right with you?

1 A Yes.

2 Q Great. Okay. And have you done anything  
3 to prepare for today's deposition?

4 A I met with -- with my attorney here  
5 yesterday evening and our company -- our in-house  
6 company counsel Adwoa briefly. She was on the  
7 call briefly yesterday. She was -- she was  
8 remote.

9 Q Do you know the last name of Adwoa?

10 A I do not.

11 Q Okay. Do you know how to spell Adwoa?

12 A I believe it's A-D -- no, I don't. I'm  
13 sorry.

14 Q Okay. That's okay.

15 And you said you had two meetings with  
16 counsel total?

17 A I had a meeting last night or late  
18 yesterday.

19 Q So just one meeting then?

20 A I had a meeting earlier this year to go  
21 over what might be coming.

22 Q Okay. So then there would be two total  
23 meetings; is that right, the one earlier this year  
24 and the one the other day?

25 A I believe so.

1           Q   Okay.  Do you know about how long those  
2   meetings lasted?

3           A   Last night -- the first meeting, I do not.  
4   It was not a long meeting.

5           The one last night, it was -- I would say,  
6   roughly five to six hours.

7           Q   And in either of those meetings, were you  
8   shown any documents by counsel?

9           A   I was.

10          Q   Okay.  And other than documents shown by  
11   counsel, did you review or look at any documents  
12   in preparation for this deposition?

13          A   I'm sorry, I don't understand the  
14   question.

15          Q   Sure.  You said that the lawyers showed  
16   you some documents; is that right?

17          A   That's correct.

18          Q   Other than the ones that they showed you,  
19   did you review any documents to prepare for this  
20   deposition?

21          A   Just the ones that I was shown last night.

22          Q   Okay.  So no additional documents?

23          A   No.  No.

24          Q   Okay.  Okay.  Did you attend college?

25          A   I did.



1 Q And where did you attend college?

2 A I believe the name of it -- it was in  
3 Tarrant County.

4 Q Okay.

5 A It was -- I think that's Tarrant County  
6 College.

7 Q Is that a community college?

8 A It -- it was at the time. I don't know if  
9 it still -- it used to be called TCJC.

10 Q Okay. And did you graduate?

11 A I did not.

12 Q Do you know for what years you attended  
13 TCJC?

14 A I would say late '80s, early '90s.

15 Q And for how many years were you there?

16 A I went part-time, so it was -- I  
17 would -- I would estimate maybe four years.

18 Q Is there any reason why you didn't  
19 graduate?

20 A Just family and I ended up at -- just  
21 family and work.

22 Q Were you working toward a specific degree  
23 while you were there?

24 A I was.

25 Q And what degree was that?

1           A   Computer science.

2           Q   Okay.  But you didn't actually receive a  
3   degree in computer science, did you?

4           A   No.

5           Q   Okay.  And other than the approximate four  
6   years that you spent at TCJC, have you had any  
7   other formal education?

8           A   I've had some training courses offered by  
9   technical seminars and classes.  I can't -- I  
10   can't think of the names of the -- of the  
11   institutions.

12          Q   And were those offered from the places  
13   that you worked or did you independently attend  
14   those seminars?

15          A   A few were independent and a few, they  
16   were work-sponsored.

17          Q   Okay.  Were -- were all of those trainings  
18   related to computer science in one way or another?

19          A   Yes.

20          Q   And do you currently hold any professional  
21   certifications?

22          A   I do not.

23          Q   Okay.  So since leaving TCJC, I guess, in  
24   the late '80s or early '90s, do you recall what  
25   your first job was after you -- after you left

1       that school?

2           A   I worked for, I believe -- while I was  
3       going there, Holiday Inn.

4           Q   Okay. Do you recall for what years you  
5       were working for Holiday Inn?

6           A   It was -- I believe it was five years  
7       total. And it was, I would say, from -- I'm  
8       guessing or estimating from '85 to maybe '90.

9           Q   Do you recall what your title was at  
10      Holiday Inn?

11          A   I held -- I was promoted several times  
12      while I was there, but my ending title was a guest  
13      service manager.

14          Q   How about after Holiday Inn, where did you  
15      work?

16          A   I worked very briefly at a company called  
17      Owens Oil Tools.

18          Q   At Owens Oil, O-I-L?

19          A   Yes, sir.

20          Q   Okay. And for what years did you work at  
21      Owens Oil?

22          A   I -- I am guessing probably -- it was  
23      probably six months, and it was in 1991.

24          Q   And what was your job title there?

25          A   I'm not sure. It was a -- it -- it was a

1 more of an industrial job. I -- I'm not sure what  
2 the title was.

3 Q Okay. Can you explain what you mean by an  
4 industrial job? Was it -- were you doing manual  
5 labor?

6 A I was doing manual labor. I was -- I was  
7 working in a pressing room.

8 Q Okay. Nothing related to computer science  
9 though?

10 A No.

11 Q Okay. How about after Owens Oil, where  
12 did you work next?

13 A That's when I began my career at  
14 Albertsons.

15 Q Okay. And what year did you start?

16 A In '91.

17 Q And what was your -- your first job with  
18 Albertsons in 1991?

19 A It was at the Ft. Worth distribution  
20 center. And are -- are you wanting to know my  
21 title when I start -- what it was when I started?

22 Q Yeah. Let's start with your title.

23 A Okay. It was a report breakdown clerk.

24 Q And you said you worked at the Ft. Worth  
25 distribution center?

1           A    Yes.

2           Q    And what were your general  
3   responsibilities as a report breakdown clerk?

4           A    I printed shelf tags for the stores and  
5   sorted them and got them ready to be sent out to  
6   the stores.  And I also broke down various reports  
7   that -- that were printed on the printers and  
8   distributed them to the -- to the users in the  
9   warehouse.

10          Q    Okay.  And when you say the shelf tags for  
11   the stores, are we talking about the actual price  
12   tags?

13          A    Yes.

14          Q    On the shelf for a product?

15          A    Yes.

16          Q    Okay.

17          A    Yes.

18          Q    And how long did you serve as the report  
19   breakdown clerk?

20          A    I would -- I would -- and this is purely  
21   just guessing, I -- probably six months, six to  
22   eight months.

23          Q    Okay.  Do you recall what your next  
24   position was with Albertsons?

25          A    It was a computer operator.

1 Q Okay. Would that have been in about 1992?

2 A Thereabouts.

3 Q Okay. And as a computer operator --  
4 operator, did you still work at the Ft. Worth  
5 distribution center?

6 A Yes.

7 Q And what were your general job  
8 responsibilities?

9 A Monitoring the mainframe system,  
10 submitting job streams, processing store orders,  
11 and printing reports, and -- and shelf tags.

12 Q Okay. Can you explain what you mean a  
13 little more by processing store orders?

14 A We -- absolutely. We -- stores would send  
15 their orders in to the -- to the warehouse  
16 electronically, and we would gather those orders  
17 and begin the process of -- of we called it  
18 billing, where we bill the stores. It's a process  
19 that relieves warehouse inventory and produces the  
20 reports needed to select store orders and store  
21 invoices --

22 Q And --

23 A -- selection labels.

24 Q Okay. Got it. And were you dealing at  
25 all with orders from Albertsons' pharmacy at this

1 time?

2 A I do not recall processing -- I do not  
3 believe we had a pharmacy there. I believe we did  
4 at one time, but I did not process, the best that  
5 I can recall, pharmacy orders.

6 Q Okay. At this time, did your -- was your  
7 position serving a specific geographic area or  
8 were you computer operator for the entire country  
9 of Albertsons stores?

10 A I believe it was for Texas stores and the  
11 Oklahoma stores. It may have just been Texas.  
12 I -- I'm not positive.

13 Q Okay.

14 A Certainly Texas.

15 Q And you said you don't recall whether you  
16 were processing pharmacy orders; is that right?

17 A That's correct.

18 Q Okay. Did the Ft. Worth distribution  
19 center, did that fill pharmacy orders?

20 A I -- I do not remember them --

21 Q Okay.

22 A I -- I believe at one time they had a  
23 pharmacy, but I -- I'm not for certain if while I  
24 was there in the early stages of -- of my  
25 employment, whether the pharmacy -- pharmacy was

1 still -- still -- they still had it in-house.

2 Q Okay. And do you know if the Ft. Worth  
3 distribution center is still in operation?

4 A It -- it was sold a while back.

5 Q Do you recall about when?

6 A I -- I want to -- I really can't  
7 give -- it would be pure speculating, but I would  
8 think it would be somewhere around 2010.

9 Q You don't have any -- any concrete  
10 information you can base -- base on as far as a  
11 general estimate of a year that it might have been  
12 sold?

13 A I do not. I'm sorry.

14 Q Could have been before 2010; could have  
15 been after 2010? Just no real --

16 A It -- it could have.

17 Q Okay. Is there any reason why 2010 sticks  
18 out in your mind?

19 A No. Other than it just seems like  
20 probably the appropriate amount of time --

21 Q Okay.

22 A -- we had a -- we had a -- that warehouse  
23 that we operated in there.

24 Q Okay. And how about after you were a  
25 computer operator in 1992, when was your next



1 position with Albertsons?

2 A It was as -- I believe they called it an  
3 IT -- or a data processing supervisor.

4 Q I'm sorry, how long were you -- did you  
5 serve as a computer operator for?

6 A I believe, probably from 1992 and I think  
7 I'm -- I'm guessing here, it was probably 1998,  
8 when I was promoted to a supervisor.

9 Q Okay.

10 A It may have been '96 to '98, somewhere  
11 around that time frame.

12 Q Okay. And just so you know, throughout  
13 these questions, I -- I really don't want you  
14 to -- to guess or speculate. I would like, to the  
15 best that you can, if you -- if you don't have a  
16 precise answer for any of the questions I give  
17 you, if you can provide a reasonable estimate of  
18 the information based on your experience, based on  
19 what you know, that's -- that's what I am shooting  
20 for.

21 I really don't want you to guess or  
22 speculate. But if you don't know the answer to  
23 something at all, that's a -- you can tell me  
24 that, and we can find a way to work through the  
25 question.

1           Is that all right?

2           A   Yes.

3           Q   Okay.   Okay.   So you were a data  
4   processing supervisor starting in around '96 or  
5   '98, right?

6           A   Yes.

7           Q   Okay.   And were you still located at the  
8   Ft. Worth distribution center?

9           A   Yes.

10          Q   Okay.   How long did you serve in that  
11   role?

12          A   I was promoted from a supervisor to a  
13   manager in two -- in 2001.   I'm -- I'm -- again,  
14   that's -- that is --

15          Q   That's an estimate?

16          A   That's an estimate.

17          Q   Okay.

18          A   2001.

19          Q   Okay.   And what were your general duties  
20   as a data processing supervisor during that time?

21          A   Yes.   The -- I oversaw the -- the  
22   operation of the computer room, the operators.   We  
23   interviewed applicants, training.   We set up jobs  
24   on the mainframe system and provided reports,  
25   custom reports for users.

1           Q   And what -- what type of reports are we  
2   talking about?

3           A   Basically, like, billing inquiries.

4           Q   Would those have been from billing  
5   inquiries related to orders from the stores?

6           A   Yes.

7           Q   And were your duties here still confined  
8   to the Texas, Oklahoma stores?

9           A   No.

10          Q   Okay.

11          A   No. That -- in 2000, I was transferred to  
12   the Lancaster distribution center or warehouse in  
13   Pennsylvania. It was in Denver, Pennsylvania.

14          Q   And that was in 2000, you said?

15          A   Yes.

16          Q   So while you were the data processing  
17   supervisor at the Ft. Worth distribution center,  
18   when you were there at that location, were  
19   you -- was your job still confined to the Texas  
20   and Oklahoma stores?

21          A   Yes.

22          Q   Okay. Okay. And then when you moved to  
23   the Lancaster distribution center in Denver,  
24   Pennsylvania that -- first of all, why did you  
25   move?

1           A   It was a lateral move.  They were  
2   opening -- that was a -- a new distribution center  
3   and they needed experienced people to -- to go to  
4   get it up and running.  We had just merged with  
5   Supervalu and it was to -- they made the -- the  
6   company made the determination that that warehouse  
7   was going to run Albertsons' computer systems.

8           So they were looking for -- for Albertsons  
9   employees to train and -- and operate those  
10   various systems.

11          Q   So I guess the team in the Lancaster  
12   distribution center in Denver, Pennsylvania, that  
13   ran the computer system for the entire company of  
14   Albertsons as a whole?

15          A   No.  No.  That was just for the stores in  
16   Pennsylvania and New Jersey.

17          Q   Oh, okay.

18          A   Maryland, I believe, as well.

19          Q   Okay.  So then when you made this lateral  
20   move, did -- did all of your job duties and  
21   responsibilities remain the same but for the new  
22   geographic area you were serving?

23          A   Yes.

24          Q   Okay.  I think you said in 2001, I guess  
25   about a year after the -- the lateral move, you

1       became the manager of data processing?

2           A   Yes.

3           Q   Okay.  Was that in the same location as  
4   Pennsylvania?

5           A   Yes.

6           Q   Oh, sorry.  And was that a promotion?

7           A   Sorry, yes, it was.

8           Q   Okay.  Can you explain how your job  
9   responsibilities changed in this new role?

10          A   I was responsible for the -- again, it's  
11   just responsible for the supervisors, the --  
12   the -- the department as a whole.

13          Q   Okay.

14          A   And to make sure everything was, you know,  
15   we followed all of the -- the procedures and that  
16   employees were adequately trained.  And a lot of  
17   my -- my responsibilities as a supervisor, you  
18   know, just followed me into the manager position  
19   as well.

20          Q   So were you managing and overseeing other  
21   IT employees or was there a different group of  
22   people you were overseeing?

23          A   It was just the local IT group.

24          Q   Okay.  So when you said that you were  
25   involved in training, you were training the local

1 IT group in this distribution center on how to use  
2 the computer system; is that fair?

3 A For -- for my department, yes.

4 Q And did your department have a specific  
5 name?

6 A I'm -- at various times we've been called  
7 data processing, the computer room, IT.

8 Q And do you know about how long you served  
9 as the data processing manager in Pennsylvania?

10 A I believe four years.

11 Q Do you know if that distribution center in  
12 Pennsylvania is still in operation today?

13 A It is.

14 Q Okay. Does Albertsons still own it?

15 A It's -- it is an Albertsons distribution  
16 center. It's Albertsons Safeway.

17 Q And do you know if that distribution  
18 center has ever processed orders from pharmacy?

19 A While I was there, they did not.

20 Q Okay. How about at any time?

21 A Not that I'm aware of.

22 Q Okay. So they would just be processing  
23 orders from the actual grocery departments of the  
24 Albertsons stores?

25 A Grocery, GM, perishable.

1 Q Okay.

2 A HBC, seasonal.

3 Q You said grocery, GM.

4 What does that mean?

5 A General merchandise.

6 Q Okay. General merchandise, okay. Okay.

7 So that takes us to about 2005, I believe.

8 Do you know what your next position was?

9 A That's when I was transferred to the Ponca  
10 City warehouse.

11 Q Were you still the data processing  
12 manager, just for the new location?

13 A Yes.

14 Q Do you know about how long you served in  
15 that role?

16 A I'm currently serving in that role.

17 Q Okay. You're currently the data  
18 processing manager in Ponca City?

19 A Well, we're called the system support  
20 manager now. The titles change names over the  
21 years.

22 Q Is that just a different name for the data  
23 processing manager, or are there different duties  
24 involved?

25 A No. It's -- it's just a different name.

1           Q   Okay.  And does the Ponca City  
2   distribution center process orders from Albertsons  
3   pharmacy?

4           A   Currently, we do not.

5           Q   Has it ever?

6           A   Yes.

7           Q   Okay.  And who do you report to currently  
8   in this position?

9           A   Danny Williams.

10          Q   Do you know Danny's job title?

11          A   He is -- I believe it is the director.

12          Q   Director of data processing?

13          A   No.  He's wear -- supply chain director.  
14   That's -- I'm sorry, that's -- in his job title,  
15   there is -- he is a director but he oversees the  
16   Ponca City warehouse.

17          Q   Okay.  Was that title previously held by  
18   Jack Gagnon?

19          A   Yes.

20          Q   Okay.  Do you know when Danny Williams  
21   took it over?

22          A   Last year.

23          Q   Okay.  Is Jack Gagnon still with the  
24   company?

25          A   No.



1 Q Do you know why he left?

2 A He retired.

3 Q Okay. And do you currently oversee  
4 employees in your current role?

5 A I do.

6 Q About how many?

7 A One supervisor and two computer operators.

8 Q Do you know their names?

9 A The supervisor is John Deal (phonetic).

10 Q Okay.

11 A And two operators. One is David Moore and  
12 the other is Christopher Casillas.

13 Q I'll save the court reporter from asking  
14 you later how to spell Casillas.

15 Do you know how that's broken down?

16 A I would have to look it up, but I think  
17 it's C-A-S-S-I-S-L-L-A. I would -- I would have  
18 to look that up. I -- I'm sorry, they -- the name  
19 just pops up automatically in e-mails, so --

20 Q Okay.

21 A -- I don't have to spell it out.

22 Q All right. Okay. Are you aware that at  
23 certain times Albertsons distributed opioids to  
24 its pharmacy from the Ponca City distribution  
25 center in Oklahoma?

1 A Yes.

2 Q Okay. Are you aware that it distributed  
3 opioids from that distribution center in the years  
4 2006 to 2008?

5 A Yes.

6 Q Are you aware that during the 2006 to 2008  
7 time frame, it distributed Schedule III, IV, and V  
8 drugs?

9 A I was not -- to go back, I was not  
10 involved with the -- with the pharmacy in  
11 those -- from '06 to 2008. I -- I did not know  
12 what type of drugs that we had here at that time.

13 Q Okay. When did you first become involved  
14 with the pharmacy at the Ponca City distribution  
15 center?

16 A It would have been in 2013.

17 Q And when we say the pharmacy at the  
18 distribution center, are we talking about the  
19 department within the distribution center that  
20 serves the Albertsons pharmacies?

21 A Yes.

22 Q Okay. And that's -- that's commonly  
23 referred to as the pharmacy of the distribution  
24 center?

25 A Yes.

1 Q Is that fair?

2 A Yes.

3 Q And you said you started working in the  
4 pharmacy distribution area around 2013?

5 A Yes. By -- by helping with my various  
6 duties setting up the -- the systems, so to speak,  
7 to process pharmacy orders. From '06 to '08, I  
8 had very limited involvement other than knowing we  
9 had the pharmacy here and we did do things in and  
10 around processing those orders.

11 Q Okay. So from the 2006-2008 time frame,  
12 you might not have been directly involved in the  
13 pharmacy side of the distribution center, but you  
14 have a general awareness as to what the pharmacy  
15 center was doing; is that fair?

16 A That's fair, yes.

17 Q Okay. Okay. And so in the 2006 to 2008  
18 time frame, I forgot what your response was, were  
19 you -- were you aware that it distributed Schedule  
20 III, IV, and V drugs in that time frame?

21 A I did not know specifically the drugs that  
22 we -- that we had here, that we were -- that we  
23 were supplying our stores. I knew we had, you  
24 know, items. To us, they're item numbers.

25 Q Okay.

1           A   And that we process store orders, but as  
2           exactly what the items were, I -- I did not know.

3           Q   Okay. And so as you sit here today, you  
4           don't know whether they were distributing Schedule  
5           III, IV, and V drugs during that time?

6           A   No. I don't know specifically.

7           Q   Okay. I mean, I'm not asking for the  
8           specific names of any drugs. I'm just asking the  
9           general, those three scheduled drugs, do you know  
10          if Albertsons was distributing during those times?

11          A   I'm sorry, I knew we had pharmacy -- we  
12          were supplying our pharmacies, but I did not know  
13          what class they were at the time.

14          Q   Do you know currently as you're sitting  
15          here today?

16          A   Yes.

17          Q   Okay. So you currently know that they  
18          were distributing Schedule III, IV, and V drugs  
19          during 2006 to 2008?

20          A   Yes.

21          Q   Okay. Are you aware that during that time  
22          frame they, Albertsons, the Ponca City  
23          distribution center, was not distributing Schedule  
24          II drugs?

25          A   I'm sorry, can you repeat that?

1           Q   Sure.  In the 2006 to 2008 time frame, are  
2   you aware that the distribution center was not  
3   distributing Schedule II drugs?

4           A   They were not?  I'm not positive that --  
5   if we were distributing Schedule IIs or not.

6           Q   Okay.  Okay.  Are you aware that between  
7   2009 and 2012, Albertsons stopped distributing  
8   drugs from the Ponca City distribution center  
9   altogether?

10          A   Yes.

11          Q   Okay.  Do you know the reason for that?

12          A   No, I do not.

13          Q   Okay.  And are you aware that from 2013 to  
14   2016, Albertsons again distributed opioids to its  
15   pharmacies from the Ponca City distribution  
16   center?

17          A   Yes.

18          Q   Okay.  Do you know why it chose again to  
19   start distributing in 2013?

20          A   I -- it was just hearsay that -- that we  
21   thought we could do a -- you know, we could  
22   service our stores better from -- from this  
23   particular warehouse.

24          Q   Okay.  Do you know how -- well, strike  
25   that.

1           Are you aware that during the 2013 to 2016  
2   time frame, the Ponca City distribution center  
3   distributed Schedule II, III, IV, and V drugs?

4           A   Yes.

5           Q   Okay. And do you know why it chose to  
6   distribute Schedule II drugs during this time  
7   frame when it hadn't before?

8           A   No.

9           Q   Are you aware that in 2016, Albertsons  
10   again stopped distributing drugs from the Ponca  
11   City distribution center?

12          A   Yes.

13          Q   Do you know why it stopped in 2016?

14          A   No.

15          Q   And have you ever heard the phrase,  
16   Suspicious Order Monitoring System, or SOMS?

17          A   Yes.

18          Q   And what do you understand that to mean?

19               MR. DORAN: Objection.

20               THE WITNESS: Monitoring the orders coming  
21   in from the stores, the quantities.

22   BY MR. LICHTER:

23          Q   Any other understanding what a Suspicious  
24   Order Monitoring System might mean?

25          A   Well, monitoring the order quantities

1 for -- for reasonableness.

2 Q Okay. Do you recall about when you first  
3 learned about suspicious order monitoring in the  
4 context of working for Albertsons?

5 A In 2013.

6 Q Okay. And do you recall the context in  
7 which you first learned about suspicious order  
8 monitoring?

9 A I was called. We had a pharmacy  
10 compliance meeting here. And I was in my office  
11 and they called me into the meeting and told me  
12 that -- that they were needing a -- some type of  
13 reporting mechanism for the suspicious -- for the  
14 pharmacy items.

15 Q Do you recall about when that meeting was?

16 A I do not.

17 Q But it was sometime in 2013?

18 A Yes.

19 Q Okay. Do you recall who was in that  
20 meeting?

21 A It was some local managers from the Ponca  
22 warehouse, Jack Gagnon, David Beck, and there were  
23 several people here from Compliance, as well as I  
24 believe there was a conference call as well.

25 Q So this initial meeting we're talking

1       about now, was it an in-person meeting?

2           A   It was an in-person meeting and  
3       they -- they also, I believe, had some people  
4       joining remotely on the -- on a conference call.

5           Q   Okay. And so were you tasked at this  
6       meeting with setting up the, I think you called it  
7       a reporting mechanism for the pharmacy items?

8           A   They -- they asked me if -- if it was  
9       possible.

10          Q   Okay.

11          A   To -- to develop something that -- that  
12       could be used for -- for that.

13          Q   That could be used for reporting?

14          A   Yes.

15          Q   Okay. And when we say reporting, what are  
16       we reporting things to?

17          A   The local warehouse here, that -- the  
18       people who would be overseeing the pharmacy  
19       operation as well as I believe pharmacy -- the  
20       compliance, pharmacy compliance.

21          Q   Okay. So I guess where -- I guess you are  
22       talking about internal reporting of certain  
23       Albertsons orders; is that right?

24          A   Yes.

25          Q   Okay. Did anybody at Albertsons in this



1 meeting or any other meeting talk to you about  
2 reporting certain orders to anyone outside of  
3 Albertsons?

4 MR. DORAN: Objection.

5 THE WITNESS: No.

6 BY MR. LICHTER:

7 Q Okay. So nobody asked you to set up a  
8 system that reported certain orders to the DEA; is  
9 that fair?

10 A We had -- we had already things in place  
11 for reporting store data to the DEA.

12 Q Okay. And what types of data are you  
13 talking about there?

14 A It was billing data.

15 Q Okay.

16 A It was in the form of an ARCOS submission.

17 Q Other than the ARCOS billing data, are you  
18 aware of any other mechanisms that were set up to  
19 report anything to the DEA?

20 MR. DORAN: Objection.

21 THE WITNESS: No.

22 BY MR. LICHTER:

23 Q Okay. And you were never asked to set up  
24 any sort of mechanism that involved reporting  
25 anything to the DEA; is that fair?

1           A   That is correct.

2           Q   Okay.   Okay.   Do you know if Albertsons  
3   had a Suspicious Order Monitoring System in place  
4   in the 2006 to 2008 time frame?

5           MR. DORAN:   Objection.

6           THE WITNESS:   There was a -- the best of  
7   my recollection, there was a -- a system in place  
8   but that system was no longer viable in 2013.

9   BY MR. LICHTER:

10          Q   Do you recall why it -- it stopped being  
11   viable?

12          A   At the time, I was told that they were  
13   looking to -- to monitor items to individual  
14   stores by individual item.

15          Q   So this is --

16          A   The store --

17          Q   Okay.   So this is in 2013 where you  
18   learned that the prior system was not viable?

19          MR. DORAN:   Objection.

20          THE WITNESS:   Yes.

21   BY MR. LICHTER:

22          Q   Okay.   And it wasn't viable because -- I'm  
23   sorry, why was the previous system not viable?

24          A   I was told that the -- the old system, you  
25   put max order quantities on items but that

1       was -- that was for a range of stores. And they  
2       wanted it more individual stores, individual  
3       items.

4           Q   Do you recall who told you that?

5           A   I do not.

6           Q   Okay. Would that have been in this 2013  
7       meeting where they asked you to develop a system?

8           A   Yes.

9           Q   Okay. You just don't recall who at the  
10      meeting told you that information?

11          A   I do not.

12          Q   Okay. Okay. For this 2006 to 2008 time  
13      frame, do you know if Albertsons SOMS played any  
14      role before an order reached the distribution  
15      center?

16           MR. DORAN: Objection.

17           THE WITNESS: I do not know.

18      BY MR. LICHTER:

19          Q   Okay. How about for this same time frame,  
20      2008 to 2008, do you know if Albertsons' SOMS  
21      played any role in the actual distribution center  
22      itself?

23           MR. DORAN: Objection.

24           THE WITNESS: My vague understanding is  
25      that there was -- there was a process set up on

1     our system for the Ponca City warehouse that would  
2     print a report if an item went -- was ordered  
3     excessively.

4     BY MR. LICHTER:

5           Q   Okay. And that process occurred at the  
6     actual distribution center?

7           A   To my understanding, it did.

8           Q   Okay. Do you know whether this step  
9     involved identifying suspicious orders?

10          A   That I do not know.

11          Q   Do you know if this step involved any sort  
12     of investigations of orders?

13          A   No. I do not.

14          Q   Okay. Do you know if this step involved  
15     reporting any orders to the DEA?

16          A   I do not.

17          Q   Okay. Okay. How about staying in this  
18     2006 to 2008 time frame, do you know if  
19     Albertsons' SOMS played any roles after orders  
20     were selected at the Ponca City warehouse?

21               MR. DORAN: Objection.

22               THE WITNESS: I do not.

23     BY MR. LICHTER:

24           Q   Okay. Okay. Let's focus now on the 2013  
25     to 2016 time frame.

1           Are you familiar with any of the details  
2       as to how Albertsons' SOMS operated in -- in this  
3       2013 to 2016 time frame?

4           MR. DORAN: Objection.

5           THE WITNESS: Yes. I am familiar with  
6       pieces of it.

7       BY MR. LICHTER:

8           Q Okay. How about, let's start with before  
9       a pharmacy order reached the distribution center.

10           Do you know whether Albertsons' SOMS  
11       played any role in that time frame?

12           MR. DORAN: Objection.

13           THE WITNESS: I'm sorry, can you repeat  
14       the question?

15       BY MR. LICHTER:

16           Q Sure. I'll ask it another way.

17           For this 2013 to 2016 time frame, do you  
18       know if Albertsons' SOMS played any role before a  
19       pharmacy order reached the distribution center?

20           MR. DORAN: Objection.

21           THE WITNESS: I -- my understanding of  
22       that system is that they -- it -- there was -- it  
23       had its own order monitoring, and it could adjust  
24       store orders before they reached the warehouse.

25       BY MR. LICHTER:

1           Q   Okay.  Do you know who would have been  
2   involved in this process?

3           A   Pharmacy compliance.

4           Q   Do you know who in pharmacy compliance,  
5   any specific names?

6           A   I believe Marc Allgood was the main person  
7   that I remember.

8           Q   Anyone else?

9           A   Maybe Bobbie Riley.

10          Q   Do you remember what Marc Allgood's role  
11   would have been?

12          A   No.  I do not know.

13          Q   Do you know what Bobbie Riley's role would  
14   have been?

15          A   No.

16          Q   Okay.  Do you have any idea who would have  
17   created this process for this SOMS process for  
18   orders prior to reaching the distribution center?

19          A   No.

20          Q   Okay.  Do you know when -- about when it  
21   may have been created?

22          A   No.

23          Q   Do you know if this pre-distribution  
24   center step involved identifying suspicious  
25   orders?

1 MR. DORAN: Objection.

2 THE WITNESS: I'm -- I can't speak to  
3 that. I -- I don't know that system.

4 BY MR. LICHTER:

5 Q Okay. Okay. Then would that mean you  
6 don't know whether this step involved reporting  
7 suspicious orders to the DEA?

8 A I do not.

9 Q Okay. Did you have any role in Albertsons  
10 pre-warehouse SOMS in the 2013 to 2016 time frame?

11 A Pre-warehouse?

12 Q Yes.

13 MR. DORAN: Objection.

14 THE WITNESS: No.

15 BY MR. LICHTER:

16 Q Okay. And you said you think that this  
17 pre-warehouse system would adjust store orders  
18 before they reached the warehouse; is that right?

19 A Yes.

20 Q Okay. And do you recall how you learned  
21 that?

22 A In -- in I believe the first pharmacy  
23 compliance meeting that I was called into.

24 Q Do you have any idea how store orders were  
25 adjusted under this system?

1           A   No.

2           Q   Okay.  And when you say adjusted, do you  
3   mean lowered, or do you mean canceled?  Do you  
4   mean both?

5                   What does adjusted mean?

6           A   That the orders were modified before they  
7   reached the warehouse.

8           Q   Okay.  Would that modification, does that  
9   mean lowering the order quantity or does it mean  
10  something else?

11          A   I -- I mean, I took it as it would lower  
12  the quantity.

13          Q   Okay.  Do you have an understanding that  
14  this pre-warehouse system was canceling any orders  
15  before they reached the warehouse?

16          A   No.

17          Q   Okay.  Okay.  Let's stick with this 2013  
18  to 2016 time frame.

19                   Do you know if Albertsons' SOMS played any  
20  role in the Ponca City warehouse itself?

21                   MR. DORAN:  Objection.

22                   THE WITNESS:  Yes.

23  BY MR. LICHTER:

24          Q   Can you explain that role?

25          A   A report was -- was created here and sent



1 to various people overseeing the pharmacy  
2 operation.

3 Q Were those warehouse employees?

4 A It was managers and a pharmacy clerk.

5 Q When you say managers and a pharmacy  
6 clerk, are those people that worked in the  
7 warehouse itself?

8 A Yes.

9 Q Okay. Do you know the names of those  
10 people?

11 A Yes. Jack Gagnon, David Beck, Sandy  
12 Evans, Laurie Hooper. I don't know if all of  
13 the -- I mean, we sent it to multiple people.  
14 Those are the ones that dealt with it the most.

15 Q Okay. And do you know who created this  
16 process?

17 A I did.

18 Q Do you know when it was created?

19 A Sometime in 2013.

20 Q And was it approximately the -- toward the  
21 beginning of 2013? Toward the end of 2013? Any  
22 further estimate you can give me?

23 A I do not recall when it was in 2013.

24 Q Okay. And did this step involve  
25 identifying orders as suspicious?

1 MR. DORAN: Objection.

2 THE WITNESS: It did.

3 BY MR. LICHTER:

4 Q And what would constitute a suspicious  
5 order under the system?

6 MR. DORAN: Objection.

7 THE WITNESS: At the -- the parameters I  
8 was giving was anything 20 percent over the  
9 store's average order. The store -- I'm sorry.  
10 The store -- the current order -- order quantity  
11 would -- was compared against the average store  
12 order quantity in 20 -- and anything over  
13 20 percent.

14 BY MR. LICHTER:

15 Q Okay. So anything -- sorry.

16 So anything over 20 percent of the -- the  
17 prior average quantity would be considered  
18 suspicious?

19 MR. DORAN: Objection.

20 THE WITNESS: Correct.

21 BY MR. LICHTER:

22 Q Okay. And were any suspicious orders ever  
23 identified in the system?

24 MR. DORAN: Objection.

25 THE WITNESS: Yes.

1 BY MR. LICHTER:

2 Q Do you know about how many?

3 A No. I do not.

4 Q Okay. Do you know if it would be as an  
5 estimate -- do you know if it would be hundreds or  
6 orders or thousands of orders or ten orders?

7 A I would say it was probably I would say  
8 probably -- for what time frame? I'm sorry.

9 Q Sure. 2013 to 2016.

10 A I mean, thinking back, it was probably  
11 hundreds to thousands.

12 Q And those would have been pharmacy orders  
13 that your Suspicious Order Monitoring System  
14 identified as suspicious orders; is that right?

15 MR. DORAN: Objection.

16 THE WITNESS: Yes.

17 BY MR. LICHTER:

18 Q Okay. And during this time frame, this  
19 2013 to 2016 time frame, the Ponca City  
20 distribution center, was that distributing drugs  
21 to Albertsons' pharmacies across the country?

22 A Yes.

23 Q Okay. Are you aware of any other  
24 distribution centers owned by Albertsons in this  
25 time frame that distributed drugs to its

1 pharmacies?

2 A I believe the Chicago warehouse in Chicago  
3 was doing that as well.

4 Q Do you know what that pharmacy is called?

5 A I believe they called that warehouse the  
6 Murdock warehouse.

7 Q And that was operating between 2013 and  
8 2016?

9 A I'm not positive on that.

10 Q Okay. Is the Murdock warehouse still in  
11 operation?

12 A I do not know.

13 Q Okay. You never worked in the Murdock  
14 warehouse, did you?

15 A No.

16 Q Okay. Okay. Talking still in this 2013  
17 to 2016 time frame, the suspicious order  
18 monitoring that played a role in the Ponca City  
19 warehouse, do you know if this system involved  
20 reporting suspicious orders to the DEA?

21 A It did not.

22 Q Okay. Do you know why it did not?

23 A It -- it wasn't set up -- it wasn't  
24 interfaced with the DEA.

25 Q Okay. And you said -- you mentioned that

1       you set up the Suspicious Order Monitoring System  
2       that was active within the Ponca City warehouse;  
3       is that right?

4             A    Yes.

5             MR. DORAN:  Objection.

6       BY MR. LICHTER:

7             Q    Can you break down what it was that you  
8       actually set up?

9             A    I took the files from the billing  
10       system --

11            Q    Uh-huh.

12            A    -- and I created a script that validated  
13       the order, and it logged -- it kept a history  
14       of -- of the stores -- for the -- to arrive at the  
15       average, it -- it kept a rolling history of that  
16       store and the item that was ordered.  If it  
17       breached the 20 percent, it was reported.  It was  
18       flagged on the report as a possible suspicious  
19       order.

20            Q    And when you say if it breached 20 percent  
21       it was reported, we're talking about internally  
22       reported to Albertsons' employees?

23            A    Yes.

24            Q    Okay.  Okay.  Did -- did the system have  
25       any other components?

1 MR. DORAN: Objection.

2 THE WITNESS: As to what --

3 BY MR. LICHTER:

4 Q As to what you set up.

5 A That was the basic reporting.

6 Q Okay. And this was essentially a  
7 spreadsheet that you set up; is that right?

8 A It -- it turned -- the -- the process  
9 created a CSV file that we then imported into  
10 Excel and e-mailed the -- the parties needing that  
11 here.

12 Q Okay. And when we say the parties, that  
13 would be Jack Gagnon, David Beck, Sandy Evans, and  
14 Laurie Hooper?

15 A Yes.

16 Q And would they receive an updated version  
17 of the spreadsheet every day?

18 A Yes.

19 Q Okay. And do you know what they were  
20 supposed to do with the spreadsheet after they  
21 received it every day?

22 A I was -- I knew that they would take that  
23 spreadsheet to call stores.

24 Q Do you know if anything else happened  
25 after they were given the spreadsheet?

1 A No.

2 Q Okay. No, you don't know; or no, nothing  
3 else happened?

4 A No, I don't know.

5 Q Okay. And did the spreadsheet that you  
6 set up for this warehouse process, did that stay  
7 consistent from the 2013 to 2016 time period?

8 MR. DORAN: Object -- objection.

9 THE WITNESS: Consistent as to the --  
10 BY MR. LICHTER:

11 Q Were any changes made to the process or to  
12 the spreadsheet that you made?

13 A Yes.

14 Q Okay. And do you recall what the first  
15 change was to the process?

16 A I do not.

17 Q Okay. Do you recall what any of the  
18 changes were to the process?

19 A At various -- at various times, I -- I was  
20 asked to -- to add columns. It was a tool for the  
21 end -- you know, for management, for the end user.

22 So from time to time they would ask if I  
23 could add a column, a specific data field, and I  
24 tried to -- to accommodate those -- those  
25 requests.

1           Q Do you recall what any of these new  
2           columns consisted of, what type of information  
3           they held?

4           A One of them was an out-of-stock field.

5           Q Anything else you can recall?

6           A Basically -- there was another version of  
7           the program, of the -- the reporting program  
8           that -- that instead of going off bottles ordered,  
9           my vague understanding, and it's been a long time,  
10          but we had a -- we had two versions of this  
11          program for a time that was running parallel. And  
12          one of them, I believe it went off pills per  
13          bottle.

14          Q Any other differences you can recall  
15          between those two programs that ran in parallel?

16          A No.

17          Q Do you know why there were two programs  
18          running in parallel?

19          A It was changes -- changes were requested  
20          that -- that if we could -- I was asked if we  
21          could create another version of it that -- and the  
22          best of my recollection, it was instead of  
23          reviewing just bottles, but the number of pills  
24          per -- per bottle.

25          Q Do you recall if that 20 percent over



1 average threshold changed between the two systems?

2 A I don't recall if that -- it changed from  
3 20 percent.

4 Q You don't recall if it changed from  
5 20 percent?

6 A I don't -- I do not recall if it changed.

7 Q Okay. And so do you know about how long  
8 these two programs were running simultaneously?

9 A I do not.

10 Q Do you know if it was the entire duration  
11 of the 2013 to 2016 time frame?

12 A The -- both of them did not run the  
13 entire -- both of them ran the entire time until  
14 we closed pharmacy. However, the modified version  
15 was introduced later. I do not know when that  
16 was.

17 Q So if I have this right, beginning in 2013  
18 with the SOMS system you created for the  
19 warehouse, that was running by itself for a period  
20 of time. And then at some point prior to 2016, a  
21 new modified version was running simultaneously  
22 with that system?

23 MR. DORAN: Objection.

24 THE WITNESS: Correct.

25 BY MR. LICHTER:

1           Q   Okay.  And you don't recall when that  
2           second program began -- you don't recall the year  
3           that second program began running simultaneously?

4           A   I do not know.

5           Q   Okay.  Do you recall if that second  
6           program was ever actually implemented at any  
7           point?

8           A   Ever implemented as to?

9           Q   Did it replace the original program that  
10          you created at any point?

11          MR. DORAN:  Objection.

12          THE WITNESS:  I do not -- we -- no.

13   BY MR. LICHTER:

14          Q   No.  It did not, or you don't know?

15          A   I don't know.

16          Q   Okay.  Was that second version being run  
17          simultaneously as sort of a test or pilot program?

18          A   It was briefly.  And we -- we continued to  
19          send throughout, until we closed the pharmacy,  
20          sending both versions of that -- of that report to  
21          the warehouse.

22          Q   Okay.  And did that modified program also  
23          identify suspicious orders?

24          MR. DORAN:  Objection.

25          THE WITNESS:  It did.

1 BY MR. LICHTER:

2 Q Okay. So there would have been two  
3 reports simultaneously that identified suspicious  
4 orders for the Ponca City warehouse?

5 A Yes.

6 Q Okay. Would they have identified the same  
7 orders as suspicious or would they have identified  
8 different orders as suspicious?

9 MR. DORAN: Objection.

10 THE WITNESS: Can you restate that  
11 question?

12 BY MR. LICHTER:

13 Q Sure. So there's two programs  
14 simultaneously running that are meant to identify  
15 suspicious orders, correct?

16 A Yes.

17 Q Did they identify identical orders as  
18 suspicious, or did they identify different orders  
19 as suspicious?

20 MR. DORAN: Objection.

21 THE WITNESS: They would have -- well, one  
22 was reporting in bottles and one, to the best of  
23 my recollection, was reporting by the number  
24 of -- of pills. So --

25 BY MR. LICHTER:

1 Q Okay.

2 A -- there could have been some variances.

3 Q Okay. And this second modified system, I  
4 believe you said the first system identified  
5 anywhere from hundreds to thousands of orders as  
6 suspicious.

7 Did this second modified system also  
8 identify hundreds to thousands of orders as  
9 suspicious?

10 MR. DORAN: Objection.

11 THE WITNESS: I -- I do not know.

12 BY MR. LICHTER:

13 Q Okay. Okay. But you created the second  
14 modified system, correct?

15 MR. DORAN: Objection.

16 THE WITNESS: Yes.

17 BY MR. LICHTER:

18 Q Okay. Okay. For this 2013 to 2016 time  
19 frame, do you know if Albertsons' SOMS played any  
20 role after orders were selected at the Ponca City  
21 warehouse?

22 MR. DORAN: Objection.

23 THE WITNESS: Could you restate that?

24 I -- I don't --

25 BY MR. LICHTER:

1 Q Sure.

2 A -- understand the question.

3 Q So we talked about whether or not the SOMS  
4 played a role before orders reach the warehouse.

5 Do you recall that?

6 A Yes.

7 Q And we talked about whether the SOMS  
8 played a role at the warehouse itself.

9 Do you remember that?

10 A Yes.

11 Q Okay. So for 2013, I'm asking if you know  
12 whether Albertsons' SOMS played any role after an  
13 order was actually selected at the warehouse?

14 MR. DORAN: Objection.

15 THE WITNESS: No.

16 BY MR. LICHTER:

17 Q No, you don't know; or no, it did not play  
18 a role?

19 A No, I don't know.

20 Q Okay.

21 MR. DORAN: Jay, we've been going a little  
22 over an hour. I don't mean to cut you off, just  
23 when we get to a natural stopping place.

24 MR. LICHTER: Sure. This -- this might be  
25 a good point. Just give me one second. Okay.

1 Just maybe two or three additional questions and  
2 then we can break.

3 Is that all right?

4 MR. DORAN: Yeah. That's fine.

5 BY MR. LICHTER:

6 Q Okay. So this 2013 to 2016 time frame  
7 regarding Albertsons' SOMS after an order was  
8 selected at the warehouse, does that mean  
9 you -- you played no role in creating any sort of  
10 system that would identify orders after orders  
11 were actually selected?

12 A Correct.

13 Q Okay. And during this 2013 -- well,  
14 strike that.

15 Do you know if there was any mechanism  
16 Albertsons had in place to report orders  
17 identified as suspicious after those orders  
18 were -- were selected at the warehouse?

19 MR. DORAN: Objection.

20 THE WITNESS: No.

21 BY MR. LICHTER:

22 Q No, you don't know?

23 A No. I do not know.

24 Q Okay. And I guess by that same token, you  
25 don't know if there was any mechanism in place

1       that identified orders as suspicious after they  
2       were selected at the warehouse; is that right?

3           A   I do not know.

4           Q   Okay.   Okay.   Do you know whether --  
5       whether orders at the Ponca City warehouse were  
6       selected and shipped the same day they were  
7       received?

8           A   They were selected the following day.

9           Q   Okay.   So an order would come in and reach  
10      the warehouse.   And I guess within 24 hours, it  
11      would be selected and shipped out?

12          A   Correct.

13          Q   Okay.

14           MR. LICHTER:   Okay.   We can stop here.  
15      Would a ten-minute break be okay with everyone?

16           MR. DORAN:   Sure.   That works.

17           THE VIDEOGRAPHER:   Off record.   Time is  
18      11:17.

19                   (Whereupon a break was had.)

20           THE VIDEOGRAPHER:   Back on record.   Time  
21      is 11:37.

22      BY MR. LICHTER:

23          Q   All right.   Welcome back, Mr. Mills.

24          A   Thank you.

25          Q   All right.   You have mentioned that in the

1       2013 to 2016 time frame, there was a system that  
2       adjusted store orders before they reached the  
3       warehouse.

4               Do you recall that?

5           A   Yes.

6           Q   Okay. Did you create that system?

7           A   No.

8           Q   Okay. Do you know who created that  
9       system?

10          A   No.

11          Q   Okay. Have you ever seen any evidence  
12       that that system existed in the 2013 to 2016 time  
13       frame?

14               MR. DORAN: Objection.

15               THE WITNESS: No.

16       BY MR. LICHTER:

17          Q   Okay. Do you know if that system was an  
18       automated system?

19               MR. DORAN: Objection.

20               THE WITNESS: I do not know.

21       BY MR. LICHTER:

22          Q   Okay. Do you know any other details or  
23       information about that system at all?

24          A   No, I do not.

25          Q   Okay. Okay. Do you know -- if that



1 system was functioning, do you know why you would  
2 have been called to create a separate system that  
3 identified suspicious orders?

4 A Well, I was told that -- that we needed a  
5 report to report on possible suspicious order  
6 quantities --

7 Q Okay.

8 A -- here at the local warehouse.

9 Q Okay. All right. You can turn to Tab 1  
10 in your exhibit binder.

11 MR. LICHTER: And we could introduce this  
12 document as Exhibit 1.

13 (Exhibit Number 1 marked for identification.)

14 MR. LICHTER: And for the record, this  
15 document is Bates numbered ALB-NM00014414.

16 BY MR. LICHTER:

17 Q Do you have that document in front of you?

18 A I do.

19 Q Okay. Have you seen this document before?

20 A I have.

21 Q Okay. When's the last time you saw it?

22 A Yesterday.

23 Q Okay. Is this an e-mail you sent to Jack  
24 Gagnon on November 13th, 2013?

25 A Yes.

1           Q   Okay.  And can you remind us who Jack  
2   Gagnon is?

3           A   He was the general manager of the  
4   warehouse.

5           Q   Okay.  And why were you sending this  
6   e-mail to him?

7           A   So what I -- what I did was take input  
8   from the pharmacy compliance team to build a  
9   report, and I was letting him know this is how  
10   the -- this is how the -- the program was going to  
11   work based on -- on the parameters that I  
12   received.

13          Q   Okay.  So when you sent this e-mail on  
14   November 13th, 2013, was this system that you  
15   describe in this e-mail, was that already  
16   implemented and in place or was it still sort of  
17   being created?

18          A   That, I am uncertain of.

19          Q   Okay.

20          A   We -- that I am -- I mean, it looks like  
21   a -- I'm not sure of the date that -- that we  
22   started creating the report.

23          Q   Okay.  You don't recall if you were  
24   sending him this e-mail as sort of an update on  
25   what you were working on as opposed to what was

1 actually up and running?

2 A I'm uncertain of that. I mean, it --  
3 obviously, it's for a meeting that he's having on  
4 the 21st, but as far as whether this was in  
5 complete operation at the time, I -- I do not know  
6 that.

7 Q Okay. And looking at the e-mail, you  
8 write, it says, Below I outlined our suspicious  
9 order system for the meeting on the 21st. Let me  
10 know if you see anything that needs further  
11 clarification.

12 Do you see that?

13 A I do.

14 Q Okay. Can you explain the nature of the  
15 meeting that you reference here?

16 A I believe he had a -- a meeting with the  
17 compliance team.

18 Q Okay. Did you attend that meeting?

19 A I -- I don't know if I attended  
20 this -- this particular meeting. I -- I never  
21 attended a pharmacy compliance meeting in its  
22 entirety. There were just times that I was called  
23 up and asked if I could add something to the  
24 report or -- or something of that nature.

25 Q Okay. So did you understand this meeting

1       that -- that took place on the 21st, would that  
2       have been a pharmacy compliance meeting?

3               MR. DORAN:  Objection.

4               THE WITNESS:  It -- it -- I can't speak to  
5       that.

6       BY MR. LICHTER:

7               Q   Okay.  Do you know who would have attended  
8       this meeting on the 21st?

9               A   If it was pharmacy compliance, it would  
10       have been the managers overseeing warehouse  
11       operation here and the compliance team.

12              Q   Anyone else?

13              A   Not that I'm aware of.

14              Q   Okay.  And it looks like you divided your  
15       outline of Albertsons' SOMS into three sections;  
16       is that right?

17              MR. DORAN:  Objection.

18              THE WITNESS:  Yes.  But again, this is not  
19       a system.  This is a reporting piece of -- of our  
20       day-to-day operation.  It was not a system.

21       BY MR. LICHTER:

22              Q   It's not a system.  Okay.  Can we --  
23       sorry.

24              A   It's -- it's a single report.

25              Q   Okay.  Can we -- can we zoom out of

1 document here and see the document here in full.

2 I just want to re-read what you wrote at the  
3 beginning of the e-mail.

4 It says, Below I outlined our suspicious  
5 order system.

6 Do you see that?

7 A Yes.

8 Q So are you saying that what you outlined  
9 was not actually a system?

10 A It -- it was more of a report than an  
11 entire system.

12 Q Okay. Why would you have referred it to  
13 as the system here in your e-mail?

14 A That's just the terminology we use.

15 Q Okay.

16 A Anything related to IT is --

17 Q Okay. We can look at the first section  
18 that you identified as basic operation.

19 Do you see that?

20 A Yes.

21 Q Okay. And the first bullet point says,  
22 program is executed after each RX billing.

23 Do you see that?

24 A I do.

25 Q Can you explain what that means?

1           A   Yes.   So our operation staff here, the  
2   computer operators, we would receive store orders.  
3   These were digital orders.  It -- what we saw on  
4   our end was store -- the internal item number, the  
5   store order quantity, and I think a confirmation  
6   number.  We then took those -- these digital  
7   orders and ran them through a series of programs  
8   that produced the various selection labels and  
9   documents for the warehouse to -- to do their job.

10           Part of that system was -- or part of  
11   those programs and -- was a -- the billing  
12   programs, was to relieve warehouse inventory, so  
13   we always kept a perpetual inventory of our  
14   system.

15           Those -- I picked up on the report after  
16   inventory had been adjusted and the warehouse  
17   selection documents were created.  My report would  
18   then read that data in and -- and flag  
19   possible -- based on the parameters that I was  
20   given by pharmacy compliance, would flag possible  
21   orders to be reviewed.

22           Q   And when you say my report, are we talking  
23   about the -- the spreadsheet you created that went  
24   to the -- the warehouse personnel?

25           A   Yes.  All of this was a spreadsheet.

1           Q   Okay.  And so when you say the program is  
2   executed after each prescription billing, does  
3   that mean once a prescription order was billed, it  
4   would enter into your spreadsheet?

5           A   We did everything in batch.  So we  
6   would -- all of the stores would send their orders  
7   at once.  Then we would take that and -- and  
8   produce that Excel spreadsheet after we had run  
9   through all of the steps to build the stores.

10           The reason why I -- I mention here that  
11   it's executed after each RX billing is if we were  
12   to -- a store were to have an issue and they  
13   weren't able to transmit their order on time or  
14   there was an issue on their side and they -- they  
15   cannot get the order to us, we would then have to  
16   send an addendum out of that spreadsheet after we  
17   processed that late order.

18           Q   Okay.

19           A   So I'm just --

20           Q   Sorry, go ahead.

21           A   I'm mainly outlining here that, you know,  
22   that this needs to run every time we have a  
23   pharmacy billing for whatever we're doing, whether  
24   if it's, you know, 300 stores or, you know, we're  
25   going back and picking up one store.

1           Q   Okay.  So the stores would all submit  
2           their orders to the warehouse.  You guys would  
3           process those billing numbers.  And then from  
4           there, you would input the ordering information  
5           into the -- the program which is the spreadsheet;  
6           is that right?

7           A   Yes.  It -- it would -- it was a file that  
8           was inputted into a -- a script that would produce  
9           the Excel text for the text, the CSV file.

10          Q   Okay.  And that's what you mean by the  
11          program is executed, that information being --  
12          being ported over into the spreadsheet?

13          A   Yes.

14          Q   Okay.  And that was done once a day?

15          A   After every pharmacy billing.

16          Q   Did that occur once a day?

17          A   Yes.  Most -- generally, yes.

18          Q   Okay.

19          A   I believe there was a few days a week we  
20          did not process pharmacy orders.

21          Q   Okay.  Okay.  And looking at the third  
22          bullet down under basic operation, you write, If  
23          store has sufficient order history, 11 previous  
24          orders, current order quantity is compared to the  
25          minimum 11/max 20-week average.



1 Do you see that?

2 A I do.

3 Q Okay. And does this process occur prior  
4 to an order reaching the Ponca City distribution  
5 center for fulfillment?

6 A No.

7 Q No. When does it occur?

8 A It happens on bullet proof -- bullet point  
9 number one after the pharmacy billing.

10 Q Okay. Does -- do the actual warehouse  
11 employees see the order before -- before they see  
12 the spreadsheet?

13 A The order wasn't selected until the  
14 following day.

15 Q Okay.

16 A And we notified the -- all the parties  
17 that were involved to -- to review the spreadsheet  
18 that -- the day prior.

19 Q Okay. And this -- this process of  
20 comparing the orders to the -- the prior minimum  
21 11/maximum 20-week average, is that a fully  
22 automated process or is someone using discretion  
23 to apply the formula?

24 A It was an automated process.

25 Q Okay. Okay. And this comparison is

1 identified in the spreadsheet?

2 A It was called out in the spreadsheet.

3 Yes.

4 Q Okay. Can you explain the reference to  
5 minimum 11/max 20 here?

6 A I can. Yes, I can. The 11, the way I was  
7 asked to -- to -- to flag these orders is that we  
8 needed 11 that -- to the best of my knowledge,  
9 I'm -- let me think about this.

10 The -- the first 11 orders would be  
11 flagged as like a new ND -- maybe not new NDC, no  
12 set order average. On the 12th order that the  
13 store sends is when we started to compare the  
14 current store order quantity against the average  
15 plus 20 percent.

16 Q Okay. And then --

17 A And then we --

18 Q Sorry. Go ahead.

19 MR. DORAN: Finish your answer.

20 THE WITNESS: And we did that for --  
21 for -- up until the 20 -- not that -- that 20-week  
22 average, that may be a 20-order average. I'm not  
23 for certain how that -- how that worked.

24 BY MR. LICHTER:

25 Q Okay. So you're not sure if the program

1       you created was comparing new orders to -- to the  
2       prior weeks or to the prior order numbers?

3           A   Well, it was to the -- the average, but  
4       in -- on this e-mail it says 20-week average, and  
5       I don't know if that is 20 -- the last 20 orders  
6       or if that was the last 20 weeks.

7           Q   Okay.

8           A   I -- I can't remember what internally,  
9       what it was -- whether it was comparing against  
10      20 weeks or 20 orders.

11          Q   Do you know who decided if it was compared  
12      against the 11 or the 20 -- the 11 weeks or the 20  
13      orders?

14          A   I took all of my direction from pharmacy  
15      compliance.

16          Q   Okay. So someone in pharmacy compliance  
17      determined that previous order metric?

18          A   I would -- I would -- I would guess. Yes.

19          Q   Okay. You don't know who that was?

20          A   No. I do not.

21          Q   Was there a specific person from pharmacy  
22      compliance that you were taking most of all of  
23      your direction from for this project?

24          A   I -- I spoke to Bobbie Riley, to Scott  
25      Johnson, and then, of course, I got -- took

1 direction from my manager here, Jack Gagnon, if he  
2 relayed something to me. I was not part of  
3 pharmacy compliance group. I just -- I just  
4 basically tried to accommodate whatever they  
5 requested.

6 Q So no one ever told you how they reached  
7 that management 11/max 20 metric?

8 A No.

9 Q Okay. And when we're talking about an  
10 order here for the spreadsheet, are we talking  
11 about a specific amount of a specific drug --  
12 drug, like Oxy 30 milligrams?

13 A It would have been by -- by drug, yes.

14 Q Okay. Okay. What would happen if an  
15 order did not have the sufficient order history of  
16 the minimum 11 previous orders?

17 A I believe it would flag that order as  
18 no -- no set average for store.

19 Q Do you know what would happen to those  
20 orders?

21 A I do not.

22 Q Okay. Do you know if those orders were  
23 considered suspicious by the spreadsheet?

24 A I do not.

25 MR. DORAN: Objection.

1 BY MR. LICHTER:

2 Q Do you know if those orders were  
3 considered suspicious by anybody?

4 A I do not. I -- I was just following the  
5 parameters that I was given.

6 Q Okay. And the same bullet point here, it  
7 goes on. The order record is reported if current  
8 order quantity is greater than the order average  
9 plus 20 percent.

10 Do you see that?

11 A I do.

12 Q And is this reporting a fully automated  
13 process as well or is there someone using  
14 discretion here on that?

15 A It is automated.

16 Q Okay. And again, this would be -- when it  
17 says it would be reported, we're talking about  
18 internal Albertsons' reporting, not to anybody  
19 outside of Albertsons; is that right?

20 A I believe the context of the e-mail,  
21 meaning it was reported, it was flagged on the  
22 spreadsheet as such -- as you see in the types of  
23 exceptions reported.

24 Q Okay. So when you're talking here about  
25 being reported, we're talking about being flagged

1 in the spreadsheet?

2 A Yes.

3 Q Okay. Do you know if this, the threshold  
4 mentioned here, the order average plus 20 percent,  
5 do you know if that ever changed?

6 A It's -- I do not know.

7 Q Okay. Would you have been aware if it did  
8 change?

9 A Yes.

10 Q Okay. But you don't recall it changing  
11 ever?

12 A I do not recall it changing.

13 Q Okay. And if an order exceeded the  
14 average plus 20 percent, would that order be  
15 canceled?

16 A I -- that was not part of my knowledge.

17 Q So you don't know?

18 A I do not know.

19 Q Okay. So you also don't know if that  
20 order would be fulfilled or cut or anything?

21 A No. I do not know.

22 Q Okay. Do you know if those orders were  
23 investigated?

24 A I do not.

25 Q Okay. And if an order exceeded the

1 average plus 20 percent, was that considered a  
2 suspicious order?

3 MR. DORAN: Objection.

4 THE WITNESS: It was just flagged as an  
5 entry that may need to be looked -- looked at.

6 BY MR. LICHTER:

7 Q Okay. And the next bullet here says, an  
8 internal history file is maintained that includes  
9 all suspicious order quantities from every  
10 execution of the program; is that right?

11 A I see that, yes.

12 Q Okay. And this is an e-mail that you  
13 wrote, correct?

14 A Correct.

15 Q Okay. What is a suspicious order  
16 quantity?

17 A Those -- a -- a suspicious order quantity  
18 is something that we may need to -- to look at  
19 more thoroughly.

20 Q Okay. Were only orders that exceeded the  
21 threshold considered suspicious?

22 MR. DORAN: Objection.

23 THE WITNESS: I'm -- I'm sorry, restate  
24 the question.

25 BY MR. LICHTER:

1           Q   Sure.  Your -- your program here flagged  
2   suspicious order quantities, correct?

3           MR. DORAN:  Objection.

4           THE WITNESS:  It flags possible suspicious  
5   orders.  Yes.

6   BY MR. LICHTER:

7           Q   Well, you -- you refer to them here in  
8   this e-mail as suspicious order quantities, right?

9           A   Yes.  That was the terminology we used.

10          Q   Okay.  Other than the reason of exceeding  
11   the 20 percent, the average plus 20 percent, was  
12   there any reason why an order would be considered  
13   a suspicious order quantity?

14          A   That, I do not know.

15          Q   Okay.  And this internal file that is  
16   maintained that you mention here in this bullet  
17   point, do you know how that file is maintained?  
18   Is it -- is it electronic or hard copy?

19          A   I vaguely remember this -- this piece of  
20   it.  I believe what the -- what the program did  
21   was for every time a store exceeded the 20 percent  
22   parameter, it would -- it would -- it would log  
23   it.  That's the best of my -- my recollection  
24   about the -- what that bullet point is.

25          Q   So it would log it in the location outside



1 of this spreadsheet that we're talking about?

2 A It -- yes.

3 Q Okay. And would it log it in an  
4 electronic file or a hard copy file?

5 A It would have been electronic.

6 Q Okay. And this would have been in -- an  
7 automated logging process?

8 A Correct.

9 Q Okay. Do you know who would have  
10 maintained that file?

11 A It -- it was an automated process.

12 Q Well, you said it was logged into an  
13 electronic file, correct?

14 A Yes.

15 Q Was there somebody that maintained that or  
16 had access to that file?

17 A There was several people who had access to  
18 it.

19 Q Did you know who they were?

20 A David Beck and Sandy Evans.

21 Q Do you know why this separate electronic  
22 file was -- was kept?

23 A It was -- it was -- again, to the best of  
24 my knowledge, it was simply a lot of the history  
25 of when this -- this process -- this program ran.

1           Q   I get that it was a log of the history,  
2           but do you know why this separate file for these  
3           orders was kept?

4           A   I do not.

5           Q   Okay. Do you know how long those files  
6           were kept for?

7           A   I -- I do not.

8           Q   Okay. Do you know if they still -- if any  
9           of those files still exist today?

10          A   Not 100 percent sure.

11          Q   Do you have a belief one way or the other?

12          A   They may still exist.

13          Q   Okay. And so you believe that orders were  
14          actually added to this internal history file?

15          A   I -- I'm sorry, repeat that.

16          Q   Sure. Do you believe that orders were  
17          actually added to this internal history file, this  
18          automatic logging file?

19          A   Yes. And again, I just want to clarify:  
20          This was a summary of what happened every time we  
21          ran this after a pharmacy billing. It was  
22          basically this is what the script did.

23          Q   Right. And this was a summary of all of  
24          the orders that exceeded this 20 percent average  
25          threshold; is that right?

1           A    I -- that, I do not know.

2           Q    Okay. Well, according to the bullet  
3   point, it says an internal history file is  
4   maintained that includes all suspicious order  
5   quantities for every execution of the program?

6           A    Yes.

7           Q    So based on what we're looking at here,  
8   does that mean that this electronic file would  
9   include a listed summary of every single  
10   suspicious order quantity that was identified by  
11   the program?

12          A    It does call that out, but I do not know  
13   if it also -- if it was every item that passed  
14   through.

15          Q    What do you mean by that?

16          A    Well, the -- the program would take that  
17   billing data and did it, logged every single item  
18   whether it was needed to be placed on the -- on  
19   the spreadsheet or not. I know I -- obviously,  
20   it's -- from this bullet point, it's -- it's doing  
21   items that it's deemed possible suspicious, but  
22   it's -- there may be other items in there as well.  
23   That's all I'm trying to -- to say.

24          Q    So you're saying that this automated  
25   process could have logged and filed all of the

1 suspicious order quantities and some other  
2 potential orders; is that what you're saying?

3 A Correct.

4 Q Okay. You just don't know what those  
5 other orders might be?

6 A That -- that's correct.

7 Q Okay. We can look at the next bullet  
8 here. It says, There is a menu that can be  
9 accessed that displays the last 20 order  
10 quantities for a store and NDC. Includes total  
11 number of times an NDC was ordered and total  
12 number of times the order quantity exceeded the  
13 average quantity.

14 Do you see that?

15 A I do.

16 Q Okay. And this is an -- is this an  
17 electronic dropdown in the spreadsheet that we've  
18 been talking about?

19 A No. That is menu driven.

20 Q Can you explain what that means?

21 A It was -- I allowed David and some of the  
22 pharmacy people here at the -- at the warehouse,  
23 Sandy, there may have been a few others, they  
24 could key in the -- our internal item number and  
25 they could see -- and a store number, and they

1       could see the times that the -- an item was --  
2       was -- breached the set 20 percent, is the way I  
3       understand it.

4           Q   So this was a -- this was kind of a quick  
5       and easy way someone can see how many times an  
6       order was excessive?

7           A   Yes.

8           Q   Okay. And everyone who had access to this  
9       spreadsheet would also have access to this menu to  
10      see that information?

11          A   I do not know that. I am not 100 percent  
12      positive. I know the main people did. Yes.

13          Q   Okay. And those people would have been  
14      David Beck, Jack Gagnon, Laurie Hooper, and Sandy  
15      Evans?

16          A   I don't know Jack had access to this.

17          Q   Okay. But the other people I named would  
18      have access to this?

19          A   They should have.

20          Q   Okay. Then the last bullet point in this  
21      section says, Currently, we are processing all  
22      Schedule II through V items through the suspicious  
23      order system.

24              Do you see that?

25          A   I do.

1           Q   Okay.  Do you know what a Form 222 in the  
2           context of pharmacy orders to the distribution  
3           center?

4           A   Yes.

5           Q   Are you aware that -- well, first, what is  
6           a Form 222?

7           A   It is the manual way that the -- the  
8           stores would send -- they would mail their  
9           Schedule II items to us for processing.

10          Q   Okay.  And that was -- that was submitted  
11          to the distribution center by the pharmacies,  
12          correct?

13          A   Yes.

14          Q   Okay.  And that was submitted by filling  
15          out a printed paper, a hard copy document,  
16          correct?

17          A   Yeah.  I think it was a -- it was a  
18          carbonless form from the DEA.

19          Q   But it was a physical paper; it wasn't  
20          like an e-mail that was being sent, correct?

21          A   Correct.

22          Q   And the paper would be printed out and  
23          mailed in an envelope to the distribution center,  
24          correct?

25          A   The way I understand it, yes.

1           Q   Okay.  Were you -- were you aware  
2           that -- that Albertsons' pharmacies were mailing  
3           their Schedule II orders via these hard copy 222  
4           forms directly to the Ponca City distribution  
5           center?

6           MR. DORAN:  Objection.

7           THE WITNESS:  I was aware of it.

8           BY MR. LICHTER:

9           Q   Okay.  Are you aware that some pharmacies  
10          were using this method right until Albertsons  
11          stopped distributing in 2016?

12          MR. DORAN:  Objection.

13          THE WITNESS:  That, I do not know.

14          BY MR. LICHTER:

15          Q   So this system that's being described  
16          here, would this system have processed those hard  
17          copy orders?

18          A   Again, this is -- when we speak of the  
19          system, it is the report, the Excel report.  Those  
20          orders were -- to the best of my knowledge, were  
21          keyed in and, yes, they would have gone through  
22          the reporting process to -- on the Excel  
23          spreadsheet.

24          Q   So all of the hard copy 222 forms that the  
25          distribution center would receive every day,

1       someone would manually key in the information from  
2       each of those forms into the spreadsheet?

3           A   No.  They were keyed into our -- our  
4       database.

5           Q   Okay.

6           A   And the billing process would pull those  
7       orders in and run them through the -- the same  
8       process as the stores sent orders in the first  
9       bullet point.

10          Q   Do you know who was responsible for keying  
11       in the information from the hard copy form?

12          A   There were numerous people.  Sandy Evans  
13       is the one I can think of the most that had the  
14       most contact with those.

15          Q   Okay.  Other -- other than the bullet  
16       points listed here in the basic operation section  
17       of your item, are you aware of any other  
18       components of Albertsons' SOMS from 2013 to 2016  
19       that are not listed here?

20               MR. DORAN:  Objection.

21               THE WITNESS:  I cannot think of any.

22       BY MR. LICHTER:

23          Q   We can look at the second section you  
24       discuss here called the type of exceptions  
25       reported.



1 Do you see that?

2 A Yes.

3 Q Okay. Can you explain what this means?

4 A The best that I can recall how this system  
5 worked, if a store ordered a -- an NDC for the  
6 first time, it was -- it was flagged on the  
7 spreadsheet as new NDC ordered. The -- the next  
8 one order quantity -- order quantity greater than  
9 20 percent of store average would be if -- if an  
10 item came in for a store that -- that exceeded the  
11 parameter on bullet point number 3 under the basic  
12 operation.

13 Q If I can -- if I can cut you off for just  
14 a second, we'll go through each of the -- the  
15 bullet points here one by one.

16 A Okay.

17 Q I just want to know generally when you  
18 write type of exceptions reported, what that means  
19 generally.

20 A It means --

21 Q What is an exception, I guess is the  
22 question.

23 A An exception is just something that's  
24 outside of -- of -- of the parameters that we set  
25 for reviewing orders.

1 Q Okay. So --

2 A Possibly --

3 Q So if an exception applied, that means  
4 that that order would appear in the spreadsheet;  
5 is that fair?

6 A Yes.

7 Q Okay. And when we say type of exceptions  
8 reported, again, we're talking about internally  
9 reported among Albertsons' employees, correct?

10 A Yes.

11 Q Okay. And these are reported by being  
12 identified within the spreadsheet, correct?

13 A Yes.

14 Q Okay. And do you know if anyone was  
15 assigned to review the -- the exceptions that  
16 appeared in the spreadsheet?

17 A Yes.

18 Q And who -- who was that?

19 A That would have been David Beck, Sandy  
20 Evans, and in Sandy's absence, I believe Laurie  
21 Hooper.

22 Q And were they supposed to review every  
23 single entry in the spreadsheet that was an  
24 exception, or were they just supposed to review  
25 certain exceptions that appeared in the

1 spreadsheet?

2 MR. DORAN: Objection.

3 THE WITNESS: That, I do not know.

4 BY MR. LICHTER:

5 Q Okay. Do you know what the purpose of  
6 their review was?

7 A That, I do not know.

8 Q Okay. Okay. We can go through the  
9 different exceptions that are listed here. And  
10 the first one says when a new NDC is ordered.

11 Can you explain what that means?

12 A Okay. I'm -- I'm vaguely -- I'm thinking  
13 that it's probably the first several times the  
14 store ordered either -- it was the first time or,  
15 you know, I -- I don't recall if we had a set  
16 limit on how many times we would flag that entry  
17 on the spreadsheet as an NDC, a new -- new NDC  
18 order. But most certainly, I -- I'm sure we -- at  
19 least the first time a store ordered a new NDC, we  
20 would -- we would flag that on the spreadsheet.

21 Q Okay. And NDC is essentially a code given  
22 to a particular drug; is that right?

23 A Yes.

24 Q Okay. So if that was the pharmacy's first  
25 time ordering a particular NDC from the warehouse,

1       that would be flagged as an exception included in  
2       the report, correct?

3             A    Correct.

4             Q    The second one, second bullet here, when a  
5       current order quantity is greater than order  
6       average plus 20 percent, this exception, I believe  
7       we've been talking about this at some length.

8                     But any time an order exceeded the prior  
9       average of those orders plus 20 percent, that  
10      would be an exception and included on this list;  
11      is that correct?

12            A    It would be flagged on the -- on the list,  
13      yes.

14            Q    And then in --in capital letters and bold  
15      at the end of each of these bullet points, for the  
16      one we're looking at here it says, order QTY  
17      greater than 20 percent of store AVG, is that how  
18      the information in this bullet point was  
19      designated in the spreadsheet?

20            A    Yes.

21            Q    Okay. Next bullet says insufficient order  
22      history to build order average, parentheses, 11  
23      prior orders.

24                     Does that mean an order would be flagged  
25      if there were not 11 prior orders by which to

1 build an average?

2 A Correct.

3 Q Okay. Next bullet point, when an item is  
4 subbed to a new NDC. I take it there were  
5 instances where certain drugs changed  
6 their -- their identifying code or NDC and that  
7 was flagged here in the spreadsheet as well?

8 A Yes. There were very -- various reasons  
9 that someone could go into our -- they could  
10 substitute an item being ordered to another item.

11 Q Okay. The next bullet point says when an  
12 item is subbed to a new NDC and the subbing item  
13 had insufficient history for order average. I  
14 think that's self-explanatory based on what we've  
15 just been discussing.

16 A Yes.

17 Q Okay. And then when an item is subbed to  
18 a new NDC and the current order is greater than  
19 the subbing item's average order.

20 So all -- all of these, I guess, these  
21 bullet points that we just went through under type  
22 of expectations reported, are these all of the  
23 reasons why an opioid order would appear on the  
24 spreadsheet?

25 A To my understanding, yes.

1           Q   Okay.  Are there any other reasons an  
2   order could appear that aren't listed here?

3           A   Not that I am aware of.

4           Q   Okay.  And the third section here in this  
5   e-mail is special processing of NDC substitutions.

6                   Do you see that?

7           A   Yes.

8           Q   And can you explain generally what that  
9   means?

10          A   Please allow me just a minute to read it.

11          Q   Sure.

12          A   I believe what I'm -- what I'm trying to  
13   convey here is just a little deeper so that they  
14   understand how this reporting structure is -- is  
15   working on the last two bullet points, how the  
16   program is -- is working on that data in case  
17   there's any questions that they may have.  It's  
18   the process that the program is -- is -- you know,  
19   what it's doing internally to -- to flag  
20   these -- the substituted NDCs.

21          Q   Okay.  And again, at the top of the  
22   e-mail, you say that you're providing the outline  
23   of the suspicious order system for Jack Gagnon's  
24   meeting.

25                   Do you see that?

1           A    I do.

2           Q    So all of the type of exceptions reported  
3           in that -- that middle section of your e-mail, are  
4           all of those orders that wind up on the  
5           spreadsheet considered suspicious orders?

6           MR. DORAN:  Objection.

7           THE WITNESS:  I do not believe so.  Can  
8           you restate the question?  I'm sorry.

9           BY MR. LICHTER:

10          Q    Sure.  Are -- are all of the orders that  
11          appear in the spreadsheet considered suspicious  
12          orders?

13          MR. DORAN:  Objection.

14          THE WITNESS:  These are items that fall  
15          outside of -- of the parameters that I was given  
16          for the reporting and that may need further  
17          investigation.

18          BY MR. LICHTER:

19          Q    So I understand that.  So if this is a  
20          suspicious order system that you're -- you're  
21          outlining here, are those orders suspicious orders  
22          that appear in -- in the spreadsheet system?

23          MR. DORAN:  Objection.

24          THE WITNESS:  I -- I can't make that  
25          determination.

1 BY MR. LICHTER:

2 Q You weren't told one way or the other?

3 A No. I was told to produce this report.

4 I -- I personally don't know what is -- you know,  
5 when we send it off to other departments, what is  
6 going to be considered a suspicious order and what  
7 is not.

8 Q Okay.

9 A These are just the -- when I say  
10 exceptions, these are things that fall outside of  
11 the normal processing.

12 Q And this process that you created, this  
13 didn't reject or reduce any orders in any way, did  
14 it?

15 A No.

16 Q Okay. Okay. You can turn to the second  
17 tab in the binder and we can have this marked as  
18 Exhibit 2.

19 (Exhibit Number 2 marked for identification.)

20 MR. LICHTER: For the record, and this is  
21 Bates numbered ALB-NM00014412.

22 BY MR. LICHTER:

23 Q And Mr. Mills, have you seen this document  
24 before?

25 A I have.



1 Q And when's the last time you saw it?

2 A Yesterday evening.

3 Q Is this a February 25, 2014, e-mail chain  
4 between you and Scott Jardine?

5 A Yes.

6 Q And who is Scott Jardine?

7 A He was part of the pharmacy compliance  
8 group.

9 Q Okay. Do you recall what his title was at  
10 this time?

11 A I'm sorry, I -- yeah. He was part  
12 of -- I'm thinking of Scott Johnson.

13 Scott Jardine was, I think, a VP, but I  
14 believe it was part of the pharmacy compliance  
15 group as well.

16 Q Do you know what he would have been a VP  
17 of?

18 A I do -- it may have been distribution.

19 Q Okay. Toward the bottom of this page,  
20 toward the bottom of the first page of the  
21 document is an e-mail from Scott Jardine to Jack  
22 Gagnon, and Lynette Berggren with a cc to Brian  
23 Rood and Rick Bunnell.

24 Do you see that?

25 A I do.

1 Q And that e-mail was sent on February 23rd,  
2 2014, correct?

3 A Yes.

4 Q Okay. And it looks like Scott forwards  
5 you that e-mail on February 25th, 2014, correct?

6 A Yes.

7 Q Okay. I think we've already talked about  
8 Jack Gagnon and his role in the warehouse.

9 Who is Lynette Berggren?

10 A I believe she was part of the pharmacy  
11 compliance group.

12 Q You don't remember her title at this time?

13 A I do not.

14 Q How about Brian Rood, do you recall what  
15 his title was at this time?

16 A I believe he was vice -- VP of  
17 distribution.

18 Q Rick Bunnell?

19 A I believe he was the same.

20 Q Okay. Do you know if Brian Rood and Rick  
21 Bunnell still work for Albertsons?

22 A I believe they have both retired.

23 Q Okay. Does Scott Jardine still work for  
24 Albertsons?

25 A I believe he is retired. I'm -- I'm not

1 positive.

2 Q Okay. So is Scott Jardine senior to  
3 everyone else on this e-mail chain, or does he  
4 hold the same position as Mr. Rood and  
5 Mr. Bunnell?

6 A I'm not -- I'm not -- I do not know that.

7 Q Okay. So in the e-mail at the bottom of  
8 the first page, Scott writes, Jack, I had a  
9 productive session with Lynette on Friday  
10 afternoon and gave Rick and Brian an update on  
11 this also. Observations are that the report is  
12 way too big and not practical to review. It needs  
13 to be right-sized to provide meaningful  
14 information that can be acted on.

15 Do you see that?

16 A I do.

17 Q Okay. Is this the spreadsheet report that  
18 we discussed in the previous exhibit?

19 A Yes.

20 Q Okay. Do you know how long the -- that  
21 report was being used prior to February 23rd,  
22 2014?

23 A I do not.

24 Q Okay. Based on this e-mail, do you know  
25 what Mr. Jardine means when he says that the

1 spreadsheet is too big and needs to be  
2 right-sized?

3 A Very vaguely, what I remember around this  
4 e-mail is that they were looking at maybe  
5 condensing down some of the entries to just to  
6 what may really need to be items that need to be  
7 investigated or -- yeah.

8 Q You said items condensed down to items  
9 that need to be investigated?

10 A Well, further reviewed.

11 Q Okay. So in -- in its form before this  
12 e-mail was written, does that mean that the -- all  
13 of the entries in the spreadsheet were not being  
14 reviewed or investigated?

15 A I --

16 MR. DORAN: Objection.

17 THE WITNESS: I -- I do not know that.

18 BY MR. LICHTER:

19 Q Okay. Okay. When he says the -- the  
20 report is too big and needs to be right-sized,  
21 does that mean that there would be fewer entries  
22 in the report?

23 MR. DORAN: Objection.

24 THE WITNESS: That's the way I interpreted  
25 it.

1 BY MR. LICHTER:

2 Q Okay. Do you know what would cause the  
3 report to be too big?

4 A No. I do not.

5 Q He then writes, Here is what I think we  
6 need to do as a next-steps process.

7 And then he lists out 12 different  
8 numbered steps.

9 Do you see that on this page, on the  
10 second page?

11 A I do.

12 Q Okay. And let's start with the -- the  
13 first section one here.

14 He says create a new report that is  
15 meaningful and meets the test of compliance with  
16 DEA regulations.

17 Do you see that?

18 A I do.

19 Q Okay. Do you know what is meant here by  
20 create a new report that is meaningful?

21 MR. DORAN: Objection.

22 THE WITNESS: I can only speculate that  
23 he's referring to the -- the -- going to  
24 a -- a -- the number of pills as opposed to the  
25 number of bottles. I'm not real sure -- I -- in

1 by further reducing the number of -- possibly  
2 reducing the number of entries on the -- on the  
3 Excel spreadsheet.

4 BY MR. LICHTER:

5 Q Did you know if a new report ever got  
6 created?

7 A That was the report that ran in parallel  
8 with -- for some time up until the close of  
9 pharmacy.

10 Q Okay. You don't recall when that second  
11 report was first run?

12 A No, I do not.

13 Q Okay. Do you recall if that new report  
14 had fewer entries than the previous report?

15 A I do not.

16 Q Okay. Did you create that second report?

17 A Yes.

18 Q Okay. Other than maybe counting pills as  
19 opposed to bottles, do you know -- was there any  
20 other way that that second report was different  
21 than the -- the first report?

22 A Not -- not -- not off the top of my head,  
23 I cannot think of anything.

24 Q Okay. Do you know if Albertsons ever took  
25 any steps to ensure the new report would meet the

1 test of compliance with DEA regulations that  
2 Mr. Jardine mentions here?

3 MR. DORAN: Objection.

4 THE WITNESS: I do not know.

5 BY MR. LICHTER:

6 Q Okay. Do you know what this -- the test  
7 of compliance refers to?

8 A Would be the parameters that -- that  
9 compliance or -- I would interpret that as  
10 the -- what we have put together as a company that  
11 complies with DEA regulations.

12 Q And there aren't any -- is there a  
13 specific test or steps that you're aware of that  
14 Albertsons took to pursue that?

15 MR. DORAN: Objection.

16 THE WITNESS: I do not know.

17 BY MR. LICHTER:

18 Q We can look at section 3. He writes, The  
19 no set average per store should be modified and  
20 shortened to fewer orders to minimize how many  
21 stores hit this category. Would suggest four, but  
22 we will need to test this and see what the right  
23 number is to support a quality result.

24 Do you see that?

25 A I do.

1           Q   And when he says no set average per store,  
2           that was one of the exception reasons that we  
3           talked about in the last document, correct?

4           A   Yes.   Okay.

5           Q   And that means that that's a store that  
6           ordered a certain amount of opioids, did not have,  
7           I think it was 11 prior orders, by which  
8           Albertsons can calculate an average; is that  
9           right?

10          A   That's what he's indicating, it -- how I  
11          would take it in this -- in this e-mail.

12          Q   Okay.   Do you know how those would be  
13          shortened to fewer orders?

14          MR. DORAN:   Objection.

15          THE WITNESS:   I -- I don't remember what  
16          we did, if anything, to -- to accomplish that.

17          BY MR. LICHTER:

18          Q   Okay.   Would lowering the amount of orders  
19          that -- that were flagged for no set average per  
20          store, would that -- would that make that data  
21          inaccurate within your spreadsheet?

22          A   I'm sorry, what's the question again?

23          Q   Would lowering that number of no set  
24          average per store in some way, would that make the  
25          data in your spreadsheet inaccurate?



1 MR. DORAN: Objection.

2 THE WITNESS: It -- it would change its  
3 reporting behavior.

4 BY MR. LICHTER:

5 Q But you don't remember if -- if anything  
6 was done to accomplish that?

7 A I -- I don't remember specifically if this  
8 was done to accomplish that. No.

9 Q Okay. When he says he would suggest four,  
10 do you know what that's referring to?

11 A I -- I don't know what -- what he's  
12 meaning by this. I don't know what he means by  
13 the right number.

14 Q Okay. As far as the prior average in your  
15 spreadsheets, the average was based on, I think,  
16 11 previous orders; is that right?

17 A Correct.

18 Q Okay. And here where he says would  
19 suggest four, does that mean that he's -- he's  
20 suggesting that the average should be based on the  
21 prior four orders as opposed to the prior 11  
22 orders?

23 MR. DORAN: Objection.

24 THE WITNESS: I -- let me read the -- the  
25 bullet point more thoroughly.

1 BY MR. LICHTER:

2 Q Sure.

3 A That's what I -- that's what I would  
4 interpret this as -- as meaning.

5 Q Okay. And he says, We will need the test  
6 this and see what the right number is to support a  
7 quality result.

8 You don't recall if there ever was any  
9 testing to -- to verify that?

10 A I do not recall anything around that,  
11 doing that.

12 Q So you don't know if any changes were  
13 implemented to address this bullet point?

14 MR. DORAN: Objection.

15 THE WITNESS: There may have been changes  
16 to -- to address shortening the report. I do not  
17 know specifically what was done. And I do not  
18 remember doing anything with the -- the limit,  
19 changing it from 11 to -- to 4, or actually it  
20 was -- yeah, 11 to 4. I -- I do not recall doing  
21 that at all.

22 BY MR. LICHTER:

23 Q Okay. Look at number five on this same  
24 list here. Says, The 20 percent guidance seems to  
25 be an industry norm, but is this a correct

1 approach to all of the drugs that are required to  
2 be looked at? Could we have a higher guideline  
3 than 20 percent on the higher classification  
4 drugs? If this is reasonable, it would, again,  
5 cause the report to be smaller and easier to take  
6 action on the outstanding items.

7 Do you see that?

8 A I do.

9 Q Okay. And the 20 percent guideline that's  
10 referenced here, that's the average plus  
11 20 percent threshold that we've been discussing?

12 A Yes.

13 Q Okay. Do you have any information on  
14 whether that 20 percent guideline is the industry  
15 norm?

16 A I do not.

17 Q Okay. Do you know how that 20 percent  
18 guideline was developed?

19 A I -- I do not.

20 Q And do you know how that 20 percent  
21 guideline was -- was chosen within Albertsons?

22 A I do not.

23 Q Okay.

24 A That was the number I was just given.

25 Q Okay. When he suggests raising the

1 guideline on the higher classification of drugs,  
2 is he referring to Schedule II drugs? Would that  
3 be the higher classification referenced here?

4 MR. DORAN: Objection. And Jay I know  
5 that earlier you did caution about not asking him  
6 to speculate. And I do think a lot of these  
7 questions are kind of asking him to do just that,  
8 but...

9 BY MR. LICHTER:

10 Q And Mr. Mills, to be clear, I'm asking in  
11 the context of -- of this e-mail that we're  
12 looking at here and the context of your  
13 communications with Albertsons' employees and the  
14 context of your -- your job duties and  
15 responsibilities, I want to know what you  
16 understood some of this information to mean. I'm  
17 definitely not asking you -- to guess or  
18 speculate.

19 Is that -- do we understand that?

20 A Yes.

21 Q Okay. So in this e-mail that was  
22 forwarded to you, when Mr. Jardine says he  
23 suggests raising the guideline on the higher  
24 classification drugs, did you understand the  
25 higher classification drugs to mean a higher

1 schedule of drugs?

2 A I'm not sure if he's referring to Schedule  
3 III through V here or not, or whether he means  
4 it's a Schedule II as being higher.

5 Q Okay.

6 A We had --

7 Q Are you confident we're referring -- or  
8 the e-mail here is referring to the scheduling of  
9 certain drugs?

10 MR. DORAN: Objection.

11 THE WITNESS: Yes.

12 BY MR. LICHTER:

13 Q Okay. And if you raise the guideline on  
14 those, like -- like he's suggesting here, that  
15 would result in fewer higher classification drug  
16 orders making it onto the spreadsheet; is that  
17 right?

18 A If you -- if you raise the -- the  
19 guideline, it would definitely reduce the number  
20 of entries.

21 Q Okay.

22 A You know, regardless of, you know,  
23 whatever he's mentioning here, yes.

24 Q Right. And then that would result in  
25 fewer higher classification drug orders being

1 reviewed by the warehouse, right, if they weren't  
2 on the spreadsheet in the first place?

3 MR. DORAN: Objection.

4 THE WITNESS: That's the way I would  
5 interpret it. Yes.

6 BY MR. LICHTER:

7 Q Okay. Do you know if his suggestion to  
8 raise the guideline beyond 20 percent, do you know  
9 if that was ever implemented?

10 A That, I do not recall.

11 Q Okay. We can look at the second page of  
12 this document. And in the list, we're looking at  
13 number seven.

14 And here he writes, Do we focus on bottles  
15 over or on percentage with regards to follow-up,  
16 and what will be the threshold for when we believe  
17 a call needs to be made? This will need to be  
18 reduced to writing, and whatever we decide is  
19 correct will need to be addressed every time with  
20 necessary documentation kept on file to support  
21 that we did, in fact, address the potential  
22 problem with the right person at the store or  
23 retail management.

24 Do you see that?

25 A I do.

1           Q   Okay.  When he says do we focus on bottles  
2           over or on percentage with regards to follow-up,  
3           do you know what that's referring to?

4           A   I -- I would -- I would -- I would guess  
5           that this is a -- that this is --

6           Q   Again, I'm not asking you to guess.

7           A   Well, I would --

8           Q   Based on the context of this e-mail and  
9           your role and duties working for --

10          A   Both --

11          Q   -- Albertsons --

12          A   -- both -- both columns are outlined  
13          within that Excel spreadsheet.  So I would take it  
14          from that he was wanting to focus on a percentage  
15          over the 20 percent of -- over the bottles.

16          Q   And how was that different than what was  
17          already in place?

18          A   There was no changes needed for -- for --  
19          if that's what they wanted to do, they could do  
20          that with the data that was provided.

21          Q   When he says this will need to be reduced  
22          to writing, do you know what that means?

23          A   No, I do not.

24          Q   Did you know if there was a written  
25          standard in place at this time for this process?

1 A No, I do not.

2 Q Do you know if any of the processes or  
3 policies changed as a result of this suggestion?

4 A No, I do not.

5 Q Okay. We can look at number eight on the  
6 same document.

7 And he says, How do we take into account  
8 areas where we are seeing significant sales  
9 increases? For example, you have to believe the  
10 pharmacies at Jewel are seeing the same type of  
11 increases that the stores are. How can this be  
12 addressed so that the stores' orders do not hit  
13 the suspicious quantity list just because they are  
14 naturally doing more business?

15 Do you see that?

16 A I do.

17 Q Is Jewel a pharmacy banner that Albertsons  
18 owned at this time?

19 A Yes.

20 Q Okay. And prior to this e-mail, do you  
21 know if the SOMS process took into consideration  
22 increased pharmacy business?

23 A That, I do not know.

24 Q Did the spreadsheet you create identify or  
25 take into consideration increased pharmacy



1 business?

2 A No.

3 Q Okay. Do you know if any -- any of the  
4 policy or process changed as a result of this  
5 suggestion here?

6 A I do not.

7 Q And look at number ten. Says, Processes  
8 that are compliant with DEA regulations will need  
9 to be put in place for order quantities that are  
10 determined to be suspicious.

11 Do you see that?

12 A I do.

13 Q Okay. Do you know what he means by  
14 processes that are compliant with the DEA  
15 regulations will need to be put in place here?

16 MR. DORAN: Objection.

17 THE WITNESS: I mean, it would just be  
18 speculating on -- on something we do here at the  
19 warehouse. But no, I was not part of that -- of  
20 that process.

21 BY MR. LICHTER:

22 Q Okay. And he -- when he's saying that  
23 processes that are compliant with DEA regulations  
24 will need to be put in place, he's saying that in  
25 an e-mail dated February 23rd, 2014, correct?

1 A Yes.

2 Q Okay. Do you know if this was ever done?

3 A I -- that, I do not know.

4 Q Okay. You weren't given any specific  
5 directions to create a new program based on this  
6 suggestion here; is that right?

7 MR. DORAN: Objection.

8 THE WITNESS: No. I'm -- I -- I don't  
9 know if it was based on this suggestion.

10 BY MR. LICHTER:

11 Q Okay. So you -- you can't recall making  
12 any changes to the spreadsheet or the process as a  
13 result of this suggestion in number ten; is that  
14 right?

15 MR. DORAN: Objection.

16 THE WITNESS: No. I -- I do not recall.

17 BY MR. LICHTER:

18 Q Okay. After that sentence he says, Jim  
19 indicated on call that we had -- that you have the  
20 authority to hold or cut a shipment based on a  
21 store not being available to be contacted timely  
22 to comment on a suspicious order. How do you do  
23 this and remain compliant? Should a store's  
24 entire order be held and shipped on the next  
25 available air shipment once the suspicious issue

1 is addressed?

2 Do you see that?

3 A I do.

4 Q Okay. Do you know whether the  
5 distribution center was cutting and shipping  
6 orders if they were not able to contact the  
7 pharmacy?

8 A I do not.

9 Q You do not know?

10 A I do not know.

11 Q Okay. Do you know if -- if the  
12 spreadsheets or any policies were changed as a  
13 result of this suggestion here?

14 A No. I do not know.

15 Q Okay. We can look at the first full  
16 paragraph after number one there. He says, We  
17 need to get this modified and put into place  
18 quickly. I believe Lynette in legal, as well as  
19 Jim, the retail division leadership team, need to  
20 be involved in the quantity to call on and  
21 potentially hold orders on decision.

22 Do you see that?

23 A I do.

24 Q Okay. When he says need to be involved in  
25 the quantity to call on, do you know what that

1       refers to?

2           A   This would be anything that's deemed a  
3       possible suspicious order.

4           Q   Those would be the orders that would be  
5       called on?

6           MR. DORAN:  Objection.

7           THE WITNESS:  I -- I believe so.

8       BY MR. LICHTER:

9           Q   Okay.  I mean, when he says called on,  
10       does that mean a call made by the distribution  
11       center to the pharmacy placing the order?

12          MR. DORAN:  Objection.

13          THE WITNESS:  That's the way I interpret  
14       the -- the sentence.

15       BY MR. LICHTER:

16          Q   Okay.  Were you ever involved in these  
17       areas?

18          A   No.

19          Q   Okay.  This sort of information never  
20       entered into your process for creating or changing  
21       the spreadsheet; is that right?

22          MR. DORAN:  Objection.

23          THE WITNESS:  No.

24       BY MR. LICHTER:

25          Q   No, that's not right?

1           A   Well, no.   Not that -- not what I recall.

2           I --

3           Q   Okay.   So you don't recall this  
4           information ever entering your process for  
5           creating or changing the spreadsheet, correct?

6           A   There were -- I don't know if -- if any of  
7           these were specifically implemented to change the  
8           report.   No, I don't.

9           Q   Okay.   And so other than creating the new  
10          system that -- that counted pills as opposed to  
11          bottles, can you recall any changes you made to  
12          the Suspicious Order Monitoring System in response  
13          to this e-mail?

14          A   There were -- the reports were -- I  
15          have -- I was asked to make changes from time to  
16          time on how it reported.   Those specific changes,  
17          I -- I do not recall what actually was made.   No.

18          Q   Okay.   I'm asking specifically in response  
19          to this e-mail, as opposed to changes that were  
20          requested from time to time.

21                  Do you recall any other changes you made  
22          as a response to this e-mail?

23                  MR. DORAN:   Objection.

24                  THE WITNESS:   The only thing I can think  
25          of is the -- the addition of the -- of the other

1 report that was running in parallel.

2 BY MR. LICHTER:

3 Q Okay. And that other report that was  
4 running in parallel, the only difference that you  
5 can recall in that report is the change from  
6 counting bottles from -- or counting pills to  
7 bottles, correct?

8 A Okay. That's -- that's the -- what I  
9 understand about it. Yes.

10 Q Okay. Okay.

11 MR. LICHTER: We've been going for about  
12 another hour. We want to take another ten-minute  
13 break?

14 MR. DORAN: Jay, we're -- I'm wondering if  
15 we want to do a short lunch break. I mean, I  
16 guess it depends if you think you have, you know,  
17 another, you know, fairly significant amount.  
18 However, you think about it, we might want to just  
19 break for a short lunch --

20 MR. LICHTER: No --

21 MR. DORAN: If you -- maybe you got a half  
22 hour or so, then we can break for shorter.

23 MR. LICHTER: I do not have a -- a  
24 significant amount more to get through. I think  
25 if we take a ten-minute break, that should give us

1 a -- we won't be held over from lunch for too  
2 long, if that's okay with everyone.

3 MR. DORAN: Yeah. Let me -- I think  
4 that's fine.

5 THE REPORTER: Do we want to go off the  
6 record?

7 MR. DORAN: Yeah. Let's go off the  
8 record. Yeah.

9 THE VIDEOGRAPHER: Going off record. Time  
10 is 12:51.

11 (Whereupon a break was had.)

12 THE VIDEOGRAPHER: Back on the record.  
13 Time is 1:06.

14 BY MR. LICHTER:

15 Q Okay. Okay. Mr. Mills, you can flip to  
16 Tab 3 in your exhibit binder.

17 A Okay.

18 MR. LICHTER: I'm going to have this  
19 marked as Exhibit 3. And for the record, this  
20 document is Bates number ALB-NM00001477. Let me  
21 know when you're ready.

22 (Exhibit Number 3 marked for identification.)

23 THE WITNESS: I'm ready.

24 BY MR. LICHTER:

25 Q Have you seen this document before?

1 MR. DORAN: You can flip through it  
2 because you're just looking at the first page.

3 THE WITNESS: I'm sorry.

4 MR. DORAN: If you want to quickly flip  
5 through it just to make sure you've seen it.

6 THE WITNESS: Okay.

7 MR. DORAN: Sorry, Jay.

8 MR. LICHTER: That's okay.

9 THE WITNESS: I've seen documents like  
10 this. I'm -- I'm not sure if it's this exact one.

11 BY MR. LICHTER:

12 Q Okay. Does this -- well, are you finished  
13 flipping through it?

14 A Yes.

15 Q Okay. Does this appear to be a  
16 March 18th, 2014, agenda for Albertsons' pharmacy  
17 supply chain committee?

18 A Yes.

19 Q Okay. Did you attend this meeting?

20 A No.

21 Q Okay. I think you mentioned that  
22 there -- you have attended meetings, not in their  
23 entirety, but you've been called in some of these  
24 meetings to -- to give input; is that correct?

25 A Mainly to receive input.



1 Q To receive input. Okay.

2 Do you recall whether or not --

3 A That was most --

4 Q I'm sorry?

5 A That was most of it.

6 Q Do you recall whether you were either  
7 called to give or receive input for this meeting?

8 A No. Unless I'm listed in here somewhere.

9 Q I don't believe you're listed. I'm just  
10 asking for your -- for your recollection.

11 A I -- I don't recall attending any part of  
12 this meeting.

13 Q Okay. This is the agenda for the pharmacy  
14 supply chain compliance committee.

15 Do you know what that committee does?

16 A They met, I believe, here at the warehouse  
17 and discussed compliance issues is -- and I guess  
18 what we were doing in our day-to-day operation.

19 Q Okay. You were no -- you were never a  
20 member of this committee, were you?

21 A No. I was not.

22 Q Okay. Do you know how often the committee  
23 meets or met? Excuse me.

24 A I believe it was once a month.

25 Q Okay. And was it your understanding that

1       this committee had a role in overseeing  
2       Albertsons' suspicious ordering process?

3           A   I believe the committee oversaw a lot more  
4       than probably just the -- the reporting process.  
5       But I think that was part of it.   Yes.

6           Q   Okay.   We can look at page -- it's marked  
7       at the bottom as 1479.   I think it's the third  
8       page of the document.   Let me know when you're  
9       there.

10          A   Okay.   I'm there.

11          Q   At the bottom of the document, it says  
12       Topic 5, review suspicious order monitoring  
13       process.

14               Do you see that?

15          A   Yes.

16          Q   And on the following page at Bates number  
17       1480, the Topic 5 section -- or excuse me, the  
18       Topic 5 notes section at the last paragraph in  
19       that section, it says, Jim indicates that the  
20       business will be implementing a max pick process  
21       within the next couple of weeks.

22               Do you see that?

23          A   I do.

24          Q   Are you familiar with this max pick  
25       process?

1           A   I've heard the terminology.  That -- that  
2   is it.

3           Q   Okay.  You don't -- do you know what it  
4   refers to?

5           A   I would -- I would estimate that  
6   it's -- it's -- it's an order cut-off limit.  
7   That's the way I interpret the max pick quantity.

8           Q   Okay.  Did this max pick process relate in  
9   any way to the -- the spreadsheet report that  
10   we've been talking about throughout this  
11   deposition?

12          A   No.  Did not.

13          Q   Okay.  Was this max pick process something  
14   you understood to occur among the warehouse  
15   employees?

16          A   I'm not for certain if the max pick is pre  
17   the warehouse receiving the orders or something  
18   that was done after.

19          Q   Okay.  Do you know how -- how this max  
20   pick process was different than what was already  
21   in place on March 18th, 2014?

22          A   No.  I do not.

23               MR. DORAN:  Objection, sorry.  Objection.

24   BY MR. LICHTER:

25          Q   That paragraph continues.  It says, There

1 was discussion around the report and ways that it  
2 needs to be improved.

3 Do you see that?

4 A Yes.

5 Q Okay. I'm going to -- when it refers to  
6 that report, do you understand this to mean the  
7 spreadsheet that we've been discussing throughout  
8 the deposition?

9 MR. DORAN: Objection.

10 THE WITNESS: I -- I really do not know  
11 what they're referring to here. There was no max  
12 pick on the spreadsheet that we sent out.

13 BY MR. LICHTER:

14 Q Okay. Are you aware of any discussions  
15 among the supplier -- or the pharmacy supply chain  
16 committee regarding ways that your spreadsheet  
17 report needed to be improved?

18 A With the exception of a few e-mails  
19 that -- about adding a column or -- and the -- the  
20 number 2 exhibit that we were just on, no, I do  
21 not.

22 Q Okay. It then says, Bobbie indicates that  
23 they will get a group back together to look at the  
24 process to include Bobbie, Scott, Nikki, Jack,  
25 David, Ray, and Tim.

1 Do you see that?

2 A I do.

3 Q Do you know if you -- if you were the Tim  
4 that's referenced here?

5 A I do not remember getting together  
6 with -- with this group of people or anything that  
7 had to do with a max pick or -- or the -- or the  
8 spreadsheet that -- that we supplied.

9 Q Do you know of any other Tim that works at  
10 Albertsons that may have been involved in this  
11 instead of you?

12 A There was a Tim Fitzgerald that worked for  
13 the company. I don't know when he left.

14 Q Okay. Was -- was Tim Fitzgerald ever on  
15 the pharmacy supply chain compliance committee?

16 A Not that I'm aware of. No.

17 Q Did you have any reason to believe that  
18 the Tim referenced here is the Tim Fitzgerald  
19 rather than yourself?

20 A No.

21 Q Okay. But you don't recall meeting with  
22 this list of people to -- to look back at the  
23 process, do you?

24 A No, I do not.

25 Q Okay. And the last sentence of this

1 section says, Jim wants to investigate whether we  
2 have a process to look comprehensively at what is  
3 being ordered in total from all sources.

4 Do you see that?

5 A I do.

6 Q Do you know who the Jim is that's  
7 referenced here?

8 A I -- no, I don't.

9 Q Okay. Do you know what this concern is  
10 referring to in this sentence?

11 A No, I don't.

12 Q Okay. And this process to look  
13 comprehensively at what is being ordered in total  
14 from all sources, do you know if that was ever  
15 developed by Albertsons?

16 A I do not know.

17 Q Were you ever asked to develop any sort of  
18 process or system to look comprehensively at what  
19 was being ordered in total from all sources?

20 MR. DORAN: Objection.

21 THE WITNESS: No.

22 MR. LICHTER: Okay. We can flip to Tab 4  
23 of the binder and have this document marked as  
24 Exhibit 4.

25 (Exhibit Number 4 marked for identification.)

1 MR. LICHTER: For the record, this  
2 document is Bates numbered ALB-NM00014384.

3 BY MR. LICHTER:

4 Q Okay. Have you seen this document before?

5 A Yes.

6 Q Okay. When's the last time you saw it?

7 A Last night.

8 Q Okay. Is this an e-mail you received from  
9 Scott Johnson on November 31st, 2014, with an  
10 attachment?

11 A October 31st, yeah.

12 Q Okay. And who is Scott Johnson?

13 A Scott Johnson was part of pharmacy  
14 compliance.

15 Q Do you remember what his title was at this  
16 time?

17 A I -- I do not.

18 Q And in the e-mail Scott writes, Tim, based  
19 on our call yesterday we have decided to proceed  
20 to the next step by enhancing the SOMS pilot.

21 Do you see that?

22 A I do.

23 Q And the SOMS pilot that's referenced here,  
24 is that the second spreadsheet process we've been  
25 discussing throughout this deposition?

1 A Yes.

2 Q Okay. That was called the SOM pilot?

3 A I believe they referred to the second  
4 report as SOM, yes.

5 Q Okay. Did SOM stand for Suspicious Order  
6 Monitoring?

7 A Yes.

8 Q Okay. And that was a pilot program at  
9 this time?

10 A I'm sure what we were doing, we were  
11 sending -- we were sending test versions or the  
12 output to all of those involved to -- to review  
13 the -- the spreadsheets.

14 Q Okay. And at this time in October of  
15 2014, given that it's still referred to as a pilot  
16 here, does that mean it was still in its test  
17 stages?

18 A That's the way I would take that.

19 Q Okay. And was that SOM pilot ever removed  
20 from a testing pilot stage into an active,  
21 implemented stage?

22 MR. DORAN: Objection.

23 THE WITNESS: We did send that. As he  
24 mentions in the next sentence, we -- we did send  
25 that, the report, from -- from the SOM pilot along



1 with the -- the original spreadsheet from 2013,  
2 yes.

3 BY MR. LICHTER:

4 Q I guess my question is more whether the  
5 SOM pilot ever moved from a pilot testing phase to  
6 an active implementation phase.

7 A To the best of my knowledge, it did in the  
8 in fact that we were -- we sent that to the  
9 warehouse personnel to use as well.

10 Q Okay. Do you recall when it moved from  
11 test pilot phase to active implemented phase?

12 A No, I do not.

13 Q Okay. Would it have been around this time  
14 at the end of 2014?

15 A Yes. I would -- I would -- I would  
16 estimate that -- that to be true.

17 Q Okay. And I think you mentioned this  
18 before, but that SOM pilot program, the difference  
19 between that program and the original program that  
20 you created was the counting of pills as opposed  
21 to bottles, correct?

22 A I believe that's the case.

23 Q Okay. Continuing the e-mail, Scott  
24 writes, We will ask you to turn on the new process  
25 and run it in parallel with the current process.

1 We want to capture the data for both components to  
2 assess.

3 Do you see that?

4 A I do.

5 Q Okay. So is it your belief then that the  
6 SOM pilot was turned on as far as its testing  
7 phase in or around October 2014?

8 A Yes.

9 Q Okay. And where he says we want to  
10 capture the data for both components to assess, do  
11 you have any idea what the results of that  
12 assessment were?

13 A I do not.

14 Q Okay.

15 MR. LICHTER: I don't have any further  
16 questions.

17 MR. DORAN: I don't have any questions  
18 either, so I think we're --

19 MR. LICHTER: Okay. Great. Just -- just  
20 to put on the record, I know we have not yet  
21 received the personnel file of Mr. Mills. So I  
22 just want to explain that we are holding the  
23 deposition open pending receipt and review of the  
24 personnel file to potentially call Mr. Mills back  
25 to ask him additional questions related to that

1 file.

2 MR. DORAN: Okay. I would say  
3 that -- that Mr. Mills does is not have the  
4 primary responsibility of compliance, sales, or  
5 marketing. So the MDL order did not require the  
6 production of the personnel file.

7 MR. LICHTER: Okay.

8 MR. DORAN: So we can have further  
9 discussion if you like after.

10 MR. LICHTER: We can talk about that off  
11 the record, but that's it for me. I don't think  
12 there's any other counsel on Zoom to check in  
13 with, so I guess we can go off the record.

14 MR. PALUMBO: This is Corey --

15 THE VIDEOGRAPHER: Okay. Going off the  
16 record --

17 MR. PALUMBO: This is --

18 THE VIDEOGRAPHER: -- time is 1:21.

19 MR. PALUMBO: -- Corey Palumbo. I  
20 represent Kroger. I'm on Zoom, but I don't have  
21 any questions.

22 MR. LICHTER: Sorry about that Corey.

23 MR. PALUMBO: No worries. Okay.

24 MR. LICHTER: All right. Thank you,  
25 everyone.

1 THE REPORTER: Mr. Mills, I'm sorry --  
2 did -- I need to get transcript orders.

3 MR. DORAN: Yeah. That was my fault.

4 THE REPORTER: That's okay. I think -- I  
5 need to get transcript orders.

6 MR. DORAN: Yeah. I mean, we can do -- I  
7 never know what our normal request is. We do  
8 not -- I do not need a rough.

9 THE REPORTER: Okay.

10 MR. DORAN: So I mean, whatever we  
11 normally -- this doesn't need to be expedited,  
12 rough -- so I --

13 THE REPORTER: Okay.

14 Just regular turnaround on the transcript?

15 MR. DORAN: Just regular turnaround would  
16 be fine.

17 THE REPORTER: And Mr. Palumbo, would you  
18 like to order the transcript?

19 MR. PALUMBO: Yeah. I would like a  
20 transcript too. I'm not necessarily sure what we  
21 would normally do either for Kroger, but I think  
22 just a regular transcript is fine.

23 (Whereupon the proceedings were concluded at

24 1:23 p.m. CST)

25

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Karisa Ekenseair, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true  
5 and correct record of the testimony given; that  
6 said testimony was taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; that reading and signing was not  
9 requested; and that I am neither counsel for,  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my notarial seal this 8th day of  
15 August, 2023.

16

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Karisa Ekenseair, CCR, RMR LS #1802

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Oklahoma Certified Shorthand Reporter

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